

CRM-M-16248-2020 (O&M)

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

**CRM-M-16248-2020 (O&M).
Decided on: July 17, 2020.**

Amandeep Singh @ Amna

.. Petitioner

VERSUS

State of Punjab

.. Respondent

*** * ***

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

*** * ***

**PRESENT Ms.Manpreet Ghuman, Advocate,
for the petitioner.**

Mr.H.S.Grewal, Addl. A.G. Punjab.

JASGURPREET SINGH PURI, J. (ORAL)

The present petition has been filed under Section 439 Cr.P.C., for the grant of regular bail in case FIR No.125 dated 22.07.2019, under Sections 22/61/85 of the Narcotics Drugs and Psychotropic Substances Act, registered at Police Station, Dhanaula, District Barnala.

The FIR in the present case came to be registered on the basis of a secret information by the police that the petitioner namely Amandeep Singh @ Amna son of Hazura Singh and one Sukhpreet Singh @

CRM-M-16248-2020 (O&M)

Preeti son of Jasvir Singh who are habitual of selling vials of drugs will be coming on motorcycle to sell vials of drugs.

The allegations against the petitioner is that he was found in possession of 15 vials of WINCIREX on 22.7.2019 by the police.

The report of the chemical examiner has been received in which it has been found that the alleged intoxicating material contained Chlorpheniramine Maleate 3.8 mg/5ml and Codeine Phosphate 9.8 mg/5ml and the alleged total recovery was 15 vials of 100 mls. each containing orange colour liquid. The petitioner was arrested on 23.7.2020 and is in custody since for the last about one year.

Learned counsel for the petitioner has submitted that the petitioner has been falsely roped in the present FIR and that no recovery of any kind has been effected from the petitioner as he was not even present at the time of alleged occurrence and that the case has been planted against the petitioner by the police. He has further submitted that as per the prosecution story, the police had intercepted a motorcycle on which three persons namely Amandeep Singh @ Amna, Sukhpreet Singh @ Preeti and another accused namely Davinder Pal Singh @ Babbu, were riding. He has further submitted that the aforesaid two co-accused have already been granted bail by this Court and that the petitioner is also on parity with aforesaid two co-accused. He has referred to Annexure P2, vide which co-accused Davinder Pal Singh @ Babbu, has been granted bail in CRM-M-43684-2019 on 16.11.2019 and other co-accused namely Deepak Kumar @ Deepa and Sukhpreet Singh @ Preeti, were also granted bail vide order dated

CRM-M-16248-2020 (O&M)

20.12.2019 in CRM-M-52835-2019. Learned counsel for the petitioner has further submitted that the mandatory provisions under Sections 50 and 51 of the NDPS Act, were not observed in the present case and that no independent witnesses were joined in the present case. He has further submitted that even otherwise assuming that the recovery was made even then the total quantity would come approximately to 1.35 kgs. which would be marginally higher than the commercial quantity pertaining to salt Codeine.

Learned counsel has further pleaded that the investigation in the present case is already complete and that the challan has already been presented on 20.11.2019 which is about 8 months ago but the charges are yet to be framed. He has further submitted that there is no other case against the petitioner and therefore, the allegation of the prosecution that the petitioner is habitual in selling drug vials is totally false and concocted one.

On the other hand, learned State counsel appearing on behalf of the State of Punjab, has stated that it is correct that the investigation in the case is complete and challan has already been presented on 20.11.2019 and the charges are yet to be framed. He has also, on instructions, submitted that it is correct that there is no other case against the petitioner. However, learned State counsel submits that since the alleged recovery is of commercial quantity, the petitioner does not deserve the concession of bail. He has also not disputed the factum of grant of bail to other co-accused as well as the parity qua the petitioner in this regard.

CRM-M-16248-2020 (O&M)

I have heard the learned counsel for the petitioner as well as learned State counsel through video conferencing.

It has not been disputed that the investigation in the present case is already complete and challan has also been presented on 20.11.2019 though charges are still to be framed. It is also not a disputed position that there is no other case against the petitioner. Apart from this, co-accused have also been enlarged on bail by the orders of this Court. The allegation contained in the FIR that the petitioner is habitual in selling drugs is required to be tested with regard to the admitted position that there is no other case against the petitioner.

Section 37 of the NDPS Act, creates a bar for the grant of bail subject to an exception that where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail, then the Court may consider the grant of bail subject to the satisfaction of the aforesaid two ingredients.

In the present case from the facts and the pleadings made by the learned counsel for the parties, qua the first ingredient, this Court is satisfied that there are reasonable grounds for believing that the petitioner is not guilty of such offence particularly in view of the fact that the prosecution story is that petitioner is habitual in selling drugs whereas now it has come on record that admittedly there is no other case against the petitioner. So far as the second ingredient is concerned, the learned State counsel has not been able to show that there is likelihood of the petitioner

CRM-M-16248-2020 (O&M)

committing any offence while on bail or influencing any of the witnesses or tampering with the record.

On the other hand, it is an admitted position that the petitioner is not involved in any other case. Therefore, this Court is of the opinion that departure can be made from the bar created under Section 37 of the NDPS Act.

It is also worth noting that the commercial quantity pertaining to salt codeine is 1 Kgs. and the total weight of the two salt i.e. Chlorpheniramine Maleate 3.8 mg/5ml and Codeine Phosphate 9.8 mg/5ml, comes out to around 1.35 kgs as per the stand taken by the learned counsel for the petitioner and therefore, the same is marginally higher than the commercial quantity.

Considering the totality of the circumstances, I deem it fit and appropriate to admit the petitioner on bail. Consequently, the petition is allowed. It is ordered that the petitioner shall be released on bail on his furnishing bail bond/surety bond to the satisfaction of the Chief Judicial Magistrate/Duty Magistrate/trial Court concerned.

It is made clear that aforesaid observations pertaining to satisfaction regarding existence of reasonable grounds are only for the purpose of deciding the present bail application and shall not be treated as an expression of opinion on merits of the case during the course of trial.

July 17, 2020.
raj arora

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking / reasoned

Yes / No

Whether reportable

Yes / No