

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

106

**CRM-M-16960-2020
Date of Decision : 16.07.2020**

Hardeep Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Bikramjeet Singh Jatana, Advocate
for the petitioner.

Mr. H.S. Sullar, DAG, Punjab
for the respondent-State.

ARUN KUMAR TYAGI, J. (Oral)

The case has been taken up for hearing through video conferencing.

The petitioner has filed the present 2nd petition under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail in case FIR No.140 dated 23.08.2019 registered under Sections 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act') at Police Station Jhunir, District Mansa.

As per the prosecution version, on 23.08.2019 police party headed by ASI Baldev Singh apprehended the petitioner on suspicion and on search as per the prescribed procedure recovered 850 intoxicating tablets from black colour polythene bag held by him in his right hand.

The petitioner being in custody since 23.08.2019 has filed the present 2nd petition for grant of regular bail. His first petition was dismissed as withdrawn vide order dated 12.03.2020 at that stage.

Petition has been opposed by learned State Counsel. However, no separate reply has been filed by the State.

I have heard learned Counsel for the petitioner and learned State Counsel and gone through the record.

Learned Counsel for the petitioner has argued that the petitioner has been falsely implicated in the case. Mandatory provisions of the NDPS act were not complied with. No independent witness was

jointed at the time of alleged recovery. As per the FSL report quantity of the contraband on the basis of average weight works out to 101.8 grams but actual weight of the tablets was not taken. If so taken the weight of the polythene bag will have to be excluded therefrom. In view of the possibility and margin of error alleged recovery from the petitioner cannot be said to fall in the category of commercial quantity and rigors of Section 37(1)(b) of the NDPS are not applicable qua the petitioner. The petitioner is not involved in any other case under the NDPS Act. Trial is likely to take long time and no purpose will be served by keeping the petitioner in custody. Therefore, the petitioner may be ordered to be released on regular bail.

On the other hand, learned State Counsel has argued that the petitioner is accused of having kept commercial quantity of the contraband in his possession. The petitioner does not deserve the concession of regular bail. Therefore, the petition may be dismissed.

In the present case quantity of the contraband allegedly recovered from possession of the petitioner is marginally higher than the commercial quantity of the contraband. The quantity of the tablets allegedly recovered from possession of the petitioner is worked out to 101.8 grams falling in the category of commercial quantity on the basis of average weight of the tablets and actual weight of the tablets does not appear to have been taken. It is challenged that any such actual weight even if taken will fall below the commercial quantity due to inclusion of the weight of the polythene bag which will be liable to be excluded and on account of the possibility and margin of error in taking weight of the contraband in either eventuality prima facie alleged recovery from the petitioner will not fall in the category of commercial quantity and rigors of Section 37(1)(b) of the NDPS will not be applicable.

Keeping in view the facts and circumstances of the case, nature of accusation against the petitioner, the period of his custody, the fact that the petitioner is not involved in any other case under the NDPS Act and also that the trial is likely to take long time due to restrictions imposed to prevent spread of infection of Covid-19 but without commenting on merits of the case, I am of the considered view that the petitioner deserves grant of the concession of regular bail.

Therefore, the petition is allowed and the petitioner is ordered to be released on regular bail on furnishing of bail bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

However, the petitioner is granted regular bail subject to the condition that he shall not commit any offence including the offence under the NDPS Act and in case of commission of any offence by him in future his bail in the present case shall also be liable to be cancelled on application to be filed in this regard.

16.07.2020

Kothiyal

(ARUN KUMAR TYAGI)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No