

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

214

CRM-M-19129-2020
Date of decision: 19.11.2020

Sarabjit @ Sabi

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Ranjit Singh Ghuman, Advocate for the petitioner.

Mr. H.S. Multani, AAG, Punjab for the respondent-State.

SUVIR SEHGAL J. (ORAL)

The hearing of this petition has been taken up through video conferencing on account of outbreak of Corona Virus (Covid-19) pandemic.

Through the instant petition filed under Section 439 of the Code of Criminal Procedure, 1973, the petitioner, namely, Sarabjit Singh @ Sabi, is seeking regular bail in case FIR No.140, dated 11.07.2017 registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act') at Police Station Goraya, District Jalandhar Rural, Annexure P-2.

As per the version of the prosecution, the petitioner was caught

on suspicion during patrolling and 300 grams of intoxicating substance was recovered from a polythene bag found in the pocket of his payjama. He was arrested at the spot and after examination from the Forensic Science Laboratory (FSL), the contraband was found to be containing salt Alprazolam and the quantity of the ingredient was 0.11%.

Learned counsel for the petitioner has argued that the contraband recovered from the petitioner falls in the category of small quantity as the salt content was found to be 0.11%. He has urged that at the time of search and seizure, the mandatory provisions of NDPS Act were not complied with by the police officials. His further argument is that there were certain discrepancies in the seal affixed on the sample allegedly sent and the sample received in the FSL. He submits that the petitioner is in custody since the last more than 8 months, the trial has not advanced even though the FIR is of the year 2017 and keeping in view the clean past of the petitioner, he deserves to be released on bail.

Controverting his arguments, learned State counsel has submitted that the petitioner is involved in other cases under the NDPS Act. He has placed reliance upon the judgment of the Hon'ble Supreme Court in ***Hira Singh Vs. Union of India***, 2020(2) RCR Criminal 523 to contend that the entire quantum of the seized substance has to be taken into consideration to determine the quantity. A reference has been made by him to the status report filed by way of affidavit dated 10.09.2020 by the DSP, Sub Division Phillaur, District Jalandhar on behalf of the State. He has argued that the petitioner does not deserve the benefit of bail as he had absconded from the proceedings.

I have considered the rival submissions of the counsel for the parties.

In view of the judgment of the Hon'ble Supreme Court in *Hira Singh's* case (supra) there is no dispute of the fact that the contraband recovered from the petitioner falls within the ambit of commercial quantity as the quantity of neutral substance is not to be excluded and has to be considered along with the actual content by weight of the offending drug. A perusal of the status report filed by the State shows that the State has explained the procedure adopted at the time of the search of the petitioner and seizure of the contraband from him. Reference has also been made to the manner in which the sample was drawn and sent for analysis to the FSL. It has further come on the record that the petitioner was granted interim bail in November, 2017, but he absconded and was declared as a proclaimed offender by the trial Court on 26.02.2018. He was arrested on 15.03.2020 and a supplementary report under Section 173 Cr.P.C. was filed before the trial court on 18.05.2020. It is therefore, apparent that the petitioner misused the concession of bail. In these circumstances, the benefit of regular bail cannot be extended to him.

Still further, the petitioner has approached this Court with tainted hands. He has not disclosed his involvement in other cases. During the course of arguments, it transpired that the petitioner has been involved in five cases under the NDPS Act, out of which he has been acquitted in three cases and one case, besides the present one, bearing FIR No.43 dated 13.09.2019, registered under Section 22 of NDPS Act,

at PS Mukandpur, District SBS Nagar is pending. A categoric assertion has been made by the petitioner in para 16 of the petition which may be noticed.

“16. That the petitioner certifies that there is no other case pending against the present petitioner at the time of filing of present petition nor he has been convicted earlier in any case including under NDPS Act”

It is therefore, clear that the petitioner has not disclosed material information to this Court. The relief of regular bail is not meant for a person, who does not approach the Court with clean hands and suppresses details about his criminal antecedents.

Keeping in view the above facts and circumstances, this court is of the view that the petitioner is not entitled to grant of regular bail. His petition is, accordingly, dismissed.

It is clarified that any observation made hereinabove shall not be construed to be an expression on the merits of the case.

19.11.2020

pooja saini

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned : Yes/No

Whether Reportable : Yes/No