

204 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-19184 of 2020
Date of Decision : 14.08.2020

Dilbar Khan

...Petitioner

Versus

State of Punjab

...Respondent

(Through video conferencing)

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Mikhail Kad, Advocate
for the petitioner.

Mr. Mehardeep Singh, Addl. A.G. Punjab.

Harsimran Singh Sethi, J. (Oral)
CRM-19509 of 2020

As prayed for, application is allowed.

CRM-M-19184 of 2020

This is a petition under Section 439 Cr.P.C. for grant of regular bail in respect of FIR No.208 dated 05.08.2019 under Sections 22 and 29 of NDPS Act, 1985 registered at Police Station Sadar Dhuri, District Sangrur.

Learned counsel for the petitioner argues that on the same date two cases were registered against the petitioner, one being FIR No.208 dated 05.08.2019 registered at Police Station Sadar Dhuri and another case being FIR No.163 dated 05.08.2019 registered at Police Station Sangrur, District Sangrur. Learned counsel for the petitioner argues that in respect of

FIR No.163 registered at Police Station Sangrur, wherein it was alleged that

the petitioner was found to be carrying contrabands, he has already been granted bail by this Court while passing order in CRM-M-49463 of 2019 on 02.07.2020.

Learned counsel for the petitioner submits that in the present case, the petitioner has been nominated by co-accused, namely, Sevak Singh and no recovery has been effected from the petitioner.

Mr. Mehardeep Singh, Addl. A.G. Punjab, who has joined the proceedings through video conference submits that the petitioner is facing two FIRs under the NDPS Act and, therefore, he is not entitled for the grant of regular bail. Learned State counsel concedes that in CRM-M-49463 of 2019, the petitioner has already been extended the benefit of bail in respect of FIR No.163 dated 05.08.2019. Learned State counsel further concedes that in the present case, no recovery has been effected from the petitioner and the petitioner has been nominated by the co-accused in the disclosure statement.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

No doubt, there are two FIRs registered against the petitioner but both are of the same date. In FIR No.163 dated 05.08.2019, the petitioner has already been granted bail by this Court. The said order passed in CRM-49463-2019 is as under:-

“CRM No.14644 of 2020

Prayer in this application is for preponing the date fixed in the main petition.

Heard.

For the reasons stated in the application, the same is allowed and the main case, which is fixed for 21.07.2020, is taken up today for hearing.

CRM-M No.49463 of 2019

Prayer in this petition is for grant of regular bail to the petitioner under Section 439 of the Code of Criminal Procedure (in short 'Cr.P.C.') in FIR No.163 dated 05.08.2019, for offence punishable under Sections 22/61 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') registered at Police Station City Sangrur, District Sangrur. Counsel for the petitioner has relied upon the order dated 23.10.2019 passed by this Court in CRM-M No.40672 of 2019 vide which the co-accused of the petitioner namely Nitin Gori, has been granted the concession of regular bail, by passing the following order:-

“Contends that as per the allegations of the prosecution itself, the polythene bag was being carried by co-accused Dilbar Khan as a pillion rider and he threw the same in the bushes, leading to the recovery of 5 strips of intoxicant injections (total 25 in number), but there is not even a whisper that any contraband was recovered from the petitioner. Also contends that petitioner is in custody since 05.08.2019 and after investigation, challan has already been presented on 18.10.2019 and charges are yet to be considered in this case. Further contends that there is no other criminal case pending against the petitioner.

The above factual position is duly acknowledged by learned State Counsel, on instructions from S.I. Darshan Singh, but opposed the bail while submitting that contraband has been recovered from the co-accused and petitioner was driving the motorcycle.

*Heard both sides and perused the paper-book.
As per the prosecution case itself, there is no allegation that petitioner was carrying the*

polythene bag

or any contraband was recovered from him, rather the recovery is alleged to have been effected from the polythene bag, which was being carried by the coaccused namely, Dilbar Khan although as a pillion rider.

Thus, in the facts and circumstances of the present case, it would be a debatable question during trial as to whether petitioner was having any knowledge about the contraband and/or merely driving the motorcycle by him would be an offence under the Act. Concededly, in the present case, charges are yet to be framed and there is no other criminal case pending against the petitioner thus, his further incarceration would not serve any purpose.

Consequently, without expressing any opinion on the merits of the case, the present petition is allowed. Petitioner be admitted to bail on his furnishing bail bonds and surety bonds to the satisfaction of learned trial Court/Duty Magistrate concerned.”

Counsel for the petitioner has further submitted that on the same day, the petitioner is involved in two FIRs i.e. after the arrest of the petitioner in the present FIR at 19:05 hours, the petitioner was involved in another FIR No.208, which was registered at 20:28 hours at Police Station Sadar Dhuri whereas the petitioner was already in custody in FIR No.163. It is further submitted that the petitioner is nominated in this FIR on the basis of the disclosure statement and on account of his involvement in the other FIR.

Counsel for the State has not disputed the factual position but opposed the prayer for bail. It is also not disputed that the trial is moving at a slow

pace and there are number of witnesses to be examined in this case and the petitioner is in custody since 05.08.2019.

Without commenting anything on merits of the case, considering the fact that the co-accused of the petitioner has already been granted the concession of regular bail by this Court; he is in custody since 05.08.2019; the custodial interrogation of the petitioner is not required and the conclusion of the trial will take some time, this petition is allowed and the petitioner is directed to be released on bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate. However, it is made clear that in case the petitioner is found involved threatening any of the prosecution witnesses or tried to influence them, in any manner then, it will be open for the prosecution to apply for cancellation of bail of the petitioner.

In the present case, it is the conceded position that the petitioner has been nominated on the basis of disclosure statement of co-accused, which statement is yet to be proved in the Court of law and that no recovery has been effected from the petitioner, thus, the petitioner has made out a case for the grant of regular bail, especially, when the trial is likely to take some time before it concludes and keeping the petitioner behind the bars will serve no useful purpose.

Without commenting upon the merits of the case, it is directed that the petitioner be released on regular bail, subject to the satisfaction of trial Court/Duty Magistrate concerned.

However, it is made clear that anything observed herein shall not be construed to be an expression of any opinion on the merits of the

It is made clear that this bail is subject to the future conduct of the petitioner and in case, the petitioner is involved in any kind of illegal activities hereinafter, even this order will be reviewed as and when those activities are brought to the notice of this Court.

August 14, 2020
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(HARSIMRAN SINGH SETHI)
JUDGE

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