

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

210

**CRM-M-19548-2019
Date of decision: 29.01.2020**

Harbans Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Sandeep Verma, Advocate
for the petitioner.

Mr. Sandeep Singh Deol, D.A.G., Punjab
for the respondent.

ARUN KUMAR TYAGI, J (ORAL)

The petitioner has filed the present petition (first) under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail in case FIR No.49 dated 10.03.2019 under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "NDPS Act") registered at Police Station Sadar Khanna, District Ludhiana.

As per the prosecution version on 10.03.2019, the police party headed by ASI Avtar Singh conducted Nakabandi on secret information and on spotting the truck parked on the roadside and seeing the truck driver leaving the same raided the same. The police party found the petitioner sitting in the truck and on search as per the prescribed procedure recovered 340 kilograms of poppy husk falling in the category of commercial quantity from the truck. On completion of investigation, the police charge sheeted the petitioner along with his co-accused. The petitioner being in custody has filed present petition for

regular bail.

The petition has been opposed by the respondent-State in terms of short affidavit of Gursharandeep Singh Grewal (P.P.S.), Senior Superintendent of Police, Khanna.

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

Learned counsel for the petitioner has submitted that the petitioner was merely a cleaner of the truck. The petitioner had no concern with the contraband and was not aware about its being carried in the truck. Amount of Rs.200/- was recovered during personal search of the petitioner which shows that he was merely a poor employee working with the registered owner. The petitioner is not involved in any other case under the NDPS Act. Co-accused Sarabjit Singh, who was driving the truck and had allegedly escaped, has been granted anticipatory bail by Coordinate Bench of this Court. There was non-compliance of mandatory provisions of Section 42 of the NDPS Act. The complainant-ASI was the investigating officer of the case. The petitioner was arrested from the house of his co-brother Pal Singh who was wanted by the police but was absconding. No prosecution witness has been examined in the case so far. The trial is likely to take long time. Therefore, the petitioner may be ordered to be released on regular bail.

On the other hand, learned State counsel has submitted that the petitioner is accused of having kept in his conscious possession commercial quantity of poppy husk. Rigors of Section 37(1)(b) are applicable to the present case. The petitioner does not deserve the grant

of regular bail. Therefore, the petition may be dismissed.

The questions as to non-compliance of the mandatory provisions of the NDPS Act and the effect of complainant being investigating officer can be determined on the basis of evidence to be produced during trial and cannot be gone into at this stage as this Court is not required to judge/weigh intrinsic evidentiary value or sufficiency of the material to be translated into evidence against the petitioner. The petitioner has claimed himself to be employed on the truck as cleaner but no such plea was taken in the petition. No doubt, co-accused Sarabjit Singh, who was allegedly driving the truck and had escaped from the spot, was granted anticipatory bail by Coordinate Bench of this Court but the case of the petitioner stands on a different footing as the petitioner was arrested from the truck in which the commercial quantity of the contraband was loaded. Rigors of Section 37(1)(b) of the NDPS Act are applicable to the case. There are no reasonable grounds for believing that the petitioner had not committed the offence punishable under Section 15 of the NDPS Act and that the petitioner will not commit any offence under the NDPS Act if released on bail. Delay in trial is by itself no ground for grant of bail as the trial can also be expedited. In these facts and circumstances of the case but without commenting on merits, I am of the considered view that the petitioner does not deserve the concession of regular bail and the petition deserves to be dismissed.

Accordingly, the petition is dismissed.

However, in view of the observations made by Hon'ble Supreme Court in *Doongar Singh Vs. State of Rajasthan 2018 (1)*

RCR Criminal 256, State of U.P. Vs. Shambhu Nath Singh and others, 2001 (2) R.C.R. (Criminal) 390, Hussain and another Vs. Union of India 2017(2) RCR Criminal 312 and Thana Singh Vs. Central Bureau of Narcotics 2013(1) R.C.R(Criminal) 861, the trial Court is directed to expiate the trial and record prosecution evidence preferably within a period of three months by conducting trial on day to day basis by allocating block of dates for the trial as directed by Hon'ble Supreme Court and by issuing coercive process for securing presence of the witnesses.

In case of non-appearance of official witnesses, the trial Court shall take appropriate action against the concerned police officials absenting without any lawful excuse by filing complaint under Section 174 of the Indian Penal Code, 1860 or taking proceedings under Section 350 of the Cr.P.C. against them.

The observations made by this Court are strictly for the purpose of disposal of the present petition and nothing in this order shall be treated as expression of any opinion on merits of the case so as to bind or influence the trial Court in adjudication of question of guilt or innocence of the petitioner.

A copy of this order be sent to the trial Court concerned for requisite compliance.

29.01.2020

Vinay

(ARUN KUMAR TYAGI)
JUDGE

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