

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

CRM-M-21016-2020

Date of decision: 05.08.2020

Rahul @ Raghu

.....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Gursimran Singh Bawa, Advocate
for the petitioner.

Mr. M.S. Nagra, AAG, 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 (second) petition under Section 439 of the Code of Criminal Procedure, 1973 (for short, 'the Cr.P.C.') for grant of regular bail in case FIR No. 190 dated 07.10.2018 under Sections 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act') registered at Police Station Cantonment, District Police Commissionerate, Amritsar.

His first petition for grant of regular bail was dismissed as withdrawn vide order dated 14.01.2020.

On 07.10.2018, the police party headed by S.I. Parminder Singh, CIA Staff, Amritsar chased Santro Car and on the same being stopped and encircled, the police party apprehended the petitioner-Rahul @ Raghu who was driving the car and co-accused Danish who

was sitting on the left front seat and Rohit Gill @ Kukka, Amit Kumar @ Pichi and Sachin Gill who were sitting on the rear seats. On search 260 grams of heroin was recovered from dashboard of the car but nothing was recovered from them on their personal search.

Pursuant to supply of advance copy, learned State Counsel has appeared and opposed the petition. However, no reply has been filed by the respondent-State.

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

Learned Counsel for the petitioner has submitted that the petitioner has been falsely implicated in the case. Recovery was allegedly made from the car which was stolen and does not belong to the petitioner. The petitioner cannot be said to be in conscious possession of the contraband allegedly recovered from dashboard of the car. Mandatory provisions of the NDPS Act were not complied with. No independent witness was joined at the time of recovery. Co-accused Danish, who was sitting on the left front seat had access to dashboard, has also been granted bail. The case of the petitioner stands on the same footing. Quantity of the contraband allegedly recovered from the car was marginally above the non commercial quantity. The trial is likely to take long time due to restrictions imposed to prevent the infection of Covid-19. No useful purpose will be served by detention of the petitioner in custody during trial. Therefore, the petitioner may be ordered to be enlarged on regular bail.

On the other hand, learned State Counsel has submitted that the petitioner was driving stolen car from the dashboard of which

recovery of commercial quantity of contraband was made. The case of the petitioner stands on different footing from that of his co-accused as the petitioner had the control over the car and has to be attributed conscious possession of the contraband. The petitioner is also involved in one more case under the NDPS Act. In view of gravity of accusation, the petitioner does not deserve the concession of regular bail. Therefore, the petition may be dismissed.

In the present case, the petitioner is alleged to be driving the stolen car from dashboard of which recovery of contraband was made. His co-accused Danish, Rohit Gill @ Kukka, Sachin Gill and Amit Kumar @ Pichi were granted bail by this Court vide orders dated 09.05.2019, 24.05.2019 and 29.05.2019, respectively on the ground of sitting in non driving seats and question as to their conscious possession of the contraband recovered from the dashboard of the car being debatable. The case of the petitioner stands on a different footing as he was driving the car and had control of the same. The mere fact that quantity of contraband allegedly recovered is marginally above the non commercial quantity is by itself no ground for grant of bail as the same does not in any manner bar/waive the applicability of rigors of Section 37(1)(b) of the NDPS Act to the case qua the petitioner. There is nothing on record to enable this Court to prima facie hold that the petitioner had not committed the offences in question and that the petitioner is not likely to commit any offence under the NDPS Act in future. The trial can be expedited on easing out of the restrictions imposed to prevent spread of infection of Covid-19 by giving priority to the case over other cases. In cases of recovery of commercial

quantity of the contraband, the Court cannot be liberal on the question of grant of bail to the concerned offender.

In view of the facts and circumstances of the case, nature of accusation and evidence against the petitioner and quantum of sentence which conviction may entail, I am of the considered view that the petitioner does not deserve the concession of regular bail.

Accordingly, the present 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 expedite the disposal of the case on resumption of normal working after easing out of the restrictions imposed to prevent the spread of Covid-19 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.

05.08.2020

kavneet singh

(ARUN KUMAR TYAGI)
JUDGE

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