

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

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**CRM-M-22407-2020
Date of decision: 02.09.2020**

Naresh Kumar @ Neshi and anotherPetitioners

Versus

State of HaryanaRespondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Arpandeeep Narula, Advocate
for the petitioners.

Mr. Naveen Singh Panwar, DAG, Haryana
for the respondent-State.

ARUN KUMAR TYAGI, J (ORAL)

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

Petitioners-Naresh Kumar @ Neshi and Deepak Kumar @ Deepu have filed the present (first) 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.259 dated 15.04.2020 registered under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "the NDPS Act") Police Station City Sirsa, District Sirsa.

Briefly stated, the case of the prosecution as per allegations made in the FIR is that on 15.04.2020, the police party headed by ASI Ashok Kumar present for patrolling duty in the area of Sachi Dadhi, Begu Road, Sirsa over powered the petitioners travelling on scooty on suspicion and on search in the presence of Raghbir Singh, District Horticulture Officer, Sirsa recovered 50 gms. smack kept in polythene

envelope from left pocket of lower worn by Naresh Kumar @ Neshi (petitioner No.1) and 40 gms. smack kept in polythene envelope from left pocket of jeans worn by Deepak Kumar @ Deepu (petitioner No.2). On interrogation, Naresh Kumar @ Neshi (petitioner No.1) disclosed that he and Kapil Gaba had purchased the contraband from a Nigerian at T-Point, Delhi and out of this contraband he had provided 40 gms. smack to Deepak Kumar @ Deepu (petitioner No.2).

The petitioners, who are in custody since the date of their arrest, have filed the present petition for grant of regular bail.

The petition has been opposed by the learned State counsel.

Learned State counsel has filed custody certificates of the petitioners through e-mail print out of which are taken on record. However, no reply has been filed by the respondent-State.

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

Learned counsel for the petitioners has argued that the petitioners have been falsely implicated in the case. Mandatory provisions of the NDPS Act were not complied with. No independent witness was joined at the time of personal search. Rigors of Section 37(1)(b) of the NDPS Act are not applicable to the case. The trial is likely to take long time and no useful purpose will be served by further detention of the petitioners in custody. Therefore, the petitioners may be granted regular bail.

On the other hand, learned State counsel has argued that the petitioners are accused of having committed a heinous offence. In

view of the gravity of accusation, the petitioners do not deserve grant of regular bail. Therefore, the petition may be dismissed.

In view of the facts and circumstances of the case, nature of accusation and evidence against the petitioners as to possession of non-commercial quantity of the contraband, in-applicability of rigors of Sections 37(1)(b) of the NDPS Act to the case and the fact that the trial is likely to take long time due to restrictions imposed to prevent the spread of infection of Covid-19 but without commenting on the merits of the case, I am inclined to extend the concession of regular bail to the petitioners.

Therefore, the petition is allowed and **Petitioners-Naresh Kumar @ Neshi and Deepak Kumar @ Deepu** are ordered to be released on regular bail on furnishing of personal and surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

However, the petitioners are granted regular bail subject to the condition that they shall not commit any similar offence under the NDPS Act after their release on bail and in case of commission of any similar offence under the NDPS Act by them in future their bail in the present case shall also be liable to be cancelled on application to be filed by the prosecution in this regard.

02.09.2020

Vinay

(ARUN KUMAR TYAGI)
JUDGE

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