

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

CRM-M-23367-2020

Date of decision:-20.8.2020

Nahar Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Joginder Pal Devgan, Advocate
for the petitioner.

Mr.J.S. Ghuman, DAG, Punjab.

H.S. MADAAN, J.(ORAL)

Case taken up through video conferencing.

This petition for regular bail has been filed by petitioner Nahar Singh – an accused in FIR No.179 dated 24.12.2018 for the offence under Section 15 of NDPS Act, registered with Police Station Kot Ise Khan, District Moga.

Briefly stated, facts of the case as per the prosecution story are that on 24.12.2018, a police party from Police Station Kot Ise Khan led by ASI Pal Singh was proceeding from police station concerned towards village Datewal, Randiala etc. in a private car, in connection with patrolling and to check crime; when the car carrying the police party had

arrived at T-point Khosa Kotla – Randiala and the time was about 3:30 p.m., then ASI Pal Singh received a secret information that Nahar Singh son of Ujjagar Singh, resident of village Cheema (present petitioner) was indulging in drug peddling and he was selling poppy-husk on the miner bridge of link road going towards Randiala to Khosa Kotla; finding the information being reliable, a raid was conducted; ruqa was sent for registration of formal FIR and the police party proceeded towards the disclosed place; after completing necessary formalities, accused was apprehended and two heavy plastic bags containing poppy-husk were recovered from his possession having 30 kgs. of poppy-husk in each bag; after drawing samples therefrom, the recovered contraband was taken into possession and accused was arrested in this case. After completion of investigation, challan against the accused has been prepared and filed in the Court. Accused had filed two applications before Judge, Special Court, Moga seeking regular bail. However, such concession was not granted to him in both the applications inasmuch as the first application was dismissed on 15.2.2019 and the second application was dismissed on 3.8.2020.

It may be mentioned here that this is the third petition for grant of regular bail filed by the petitioner before this Court. Similar two petitions bearing CRM-M-13582-2019 and CRM-M-20050-2019 were withdrawn by him on 1.4.2019 and 5.2.2020, respectively. Now the petitioner has approached this Court again for grant of similar relief, which request is being resisted by the State counsel.

I have heard learned counsel for the parties besides going

through the record.

Learned counsel for the petitioner has stated that the petitioner is behind bars for more than one and a half years; the conclusion of trial is likely to take long time on account of COVID-19 pandemic; there has been violation of several mandatory provisions by the investigating agency while apprehending the accused and effecting recovery from him, therefore, he be released on bail.

Whereas, learned State counsel has opposed the request tooth and nail.

After hearing learned counsel for the parties, I find that the recovery involved in this case amounts to commercial quantity, attracting rigor of Section 37 of the Act. Section 37 of the NDPS Act reads as under:

Offences to be cognizable and non-bailable.—

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for 3 [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is

not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of subsection (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.

There is no reason available to this Court to record satisfaction that there are reasonable grounds for believing that the petitioner is not guilty of such offence and that he is not likely to commit any offence while on bail.

Further, in view of bar under Section 37 of the Act, the request for bail cannot be accepted.

As regards the contentions raised by learned counsel for the petitioner with regard to alleged procedural irregularities while apprehending the accused and effecting recovery from him, those may be of some relevance during the trial before Special Judge, Moga so as to determine the guilt of the accused but not here when the question to be seen is entitlement of petitioner to grant him regular bail. The factors which are to be considered to determine whether the petitioner is entitled to grant of bail are different from the factors which are to be kept in mind while determining guilt of an accused during trial.

Now coming to the ground on which the bail is being sought i.e. the proceedings in the trial Court having been held up on account of COVID-19, this pandemic has affected a large part of the world, the number of infected persons throughout the world running into crores and deaths into lakhs, this is an unprecedented epidemic. The life had almost

come to standstill, when this pandemic started affecting the human population and got spread very quickly. The functioning of the Courts was also got affected. However, things are slowly returning to the normal and hopefully situation would improve further with the passage of time and normal working would be resumed in the Court in near future.

The drug trafficking is rising at an alarming rate in this region, which has ruined the lives of young men and women. Drug peddlers for a small monetary consideration make the youth to use drugs for a small time excitement/kick. The drug peddlers have successfully destroyed the social fabric of our society and led youth to the wrongful path. Such type of persons need to be dealt with firmly and sternly and no sympathy can be shown to them lest that should prove to be counter productive and result in increased drug trafficking.

Therefore, finding no merit in the petition, the same stands dismissed.

20.8.2020
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No