

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

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CRM-M-24553-2020 (O&M)

Date of Decision : 28.08.2020

Ninder Singh @ Baba

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Dr. Rau P.S. Girwar, Advocate
for the petitioner.

Mr. Amit Mehta, Sr. DAG, Punjab
for the respondent-State.

ARUN KUMAR TYAGI, J. (Oral)

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

CRM-21045-2020

Prayer in the application filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') is for exemption from filing certified copies of Annexures P-1 to P-6.

For the reasons mentioned in the application, the same is allowed and the petitioner is exempted from filing certified copies of Annexures P-1 to P-6 and true translated copies of the same are taken on record.

CRM-M-24553-2020

The petitioner has filed the present (third) petition under Section 439 of the Cr.P.C. for grant of regular bail in case FIR No.140 dated 18.10.2018 registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act') at Police Station Nehianwala, Bathinda.

Briefly stated the case of the prosecution against the petitioner is that on 18.10.2018 police party headed by S.I. Gurinder Singh overpowered the petitioner and his co-accused when they were about to start motorcycle No.PB-32G-9147 and on search recovered 1450 intoxicating tablets labelled Clavidol-SR-100 and 500 intoxicating tablets labelled Tensiwin-0.50 from the polythene bag held by petitioner-Ninder Singh @ Baba and 2000 tablets of Clavidol-SR-100 were recovered from polythene bag held by co-accused Jaspreet Singh without any licence or permit. FIR was registered and on completion of investigation challan has been filed against them.

First bail petition filed by the petitioner was dismissed as withdrawn vide order dated 06.05.2019 passed by the Co-ordinate Bench in CRM-M-8585-2019 whereas second bail petition was dismissed as withdrawn vide order dated 09.12.2019 passed by this Court in CRM-M-23503-2019.

The petitioner, who is in custody since 18.10.2018, has filed the present (third) petition for grant of regular bail.

Petition has been opposed by learned State Counsel. However, no reply has been filed by respondent-State.

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

Learned Counsel for the petitioner has argued that the petitioner has been falsely implicated in the case. Mandatory provisions of the NDPS Act were not complied with. Complainant himself was the Investigating Officer of the case which is covered by the ratio of judgment of Hon'ble Supreme Court passed in ***Mohal Lal Vs. State of***

Punjab : 2018 (4) RCR (Criminal) 101. No independent witness was joined at the time of alleged recovery. The petitioner was granted interim bail twice and he did not misuse the concession of interim bail. The petitioner is not involved in any other case under the NDPS Act. Out of 12 prosecution witnesses only 3 prosecution witnesses have been examined and the trial is likely to take long time due to restrictions imposed to prevent spread of infection of Covid-19. No useful purpose will be served by keeping the petitioner in custody. Therefore, the petitioner may be ordered to be released on regular bail. In support of his arguments learned Counsel for the petitioner has relied on the judgments of Hon'ble Supreme Court passed in ***Dataram Singh Vs. State of Uttar Pradesh and another : 2018 (2) RCR (Criminal) 131; Prahlad Singh Vs. State of Haryana : 2020 (2) RCR (Criminal) 597; Sanjay Chandra Vs. CBI : 2011 (4) RCR (Criminal) 898; Mohan Lal Vs. State of Punjab : 2018 (4) RCR (Criminal) 101; Union of India Vs. Mohanlal and another : 2016 (1) RCR (Criminal) 858*** and judgments of this Court passed in ***CRM-M No.53707 of 2018 titled as Kulwinder Singh @ Kindi Vs. State of Punjab decided on 13.03.2019*** and ***Rajvir Singh @ Raju Vs. State of Punjab : 2018 (4) RCR (Criminal) 375.***

On the other hand, learned State Counsel has argued that the recovery of commercial quantity of intoxicant tablets was made from the petitioner. In view of gravity of offence committed by the petitioner, the petitioner does not deserve the concession of regular bail. Therefore, the petition may be dismissed.

The question what is the effect of non-compliance with the provisions of the NDPS Act, not joining of independent witness and

complainant being the Investigating Officer have to be decided on the basis of evidence to be produced during trial and in view of the prejudice thereby caused to the petitioner. Keeping in view the facts and circumstances of the case, nature of accusation and evidence against the petitioner, applicability of rigors of Section 37(1)(b) of the NDPS Act, absence of material to enable this Court to prima facie hold that the petitioner has not committed the offence in question and that the petitioner will not commit any other offence under the NDPS Act in future if released in bail and also the fact that the trial can be expedited on easing out of the restrictions imposed to prevent spread of infection of Covid-19, I am of the considered view that the petitioner does not deserve the concession of regular bail.

In view of the facts of the present case which are evidently distinguishable the observations in judicial precedents relied upon by the learned Counsel for the petitioner are not applicable and are not of any help to the petitioner.

In view of the above, the petition for grant of regular bail to the petitioner 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 after easing out 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.

28.08.2020

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(ARUN KUMAR TYAGI)
JUDGE

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