

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-25750 of 2020 (O&M)

Date of decision:16.12.2020

Kamal Singh @ Kamaal Singh

... Petitioner

Vs.

Narcotics Control Bureau, Chandigarh

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. D.N.Ganeriwala, Advocate
for the petitioner.

Ms. Shweta Nahata, Central Govt. Counsel
for the respondent-Narcotic Control Bureau.

SUVIR SEHGAL J.

The hearing of this petition has been taken up through video conferencing on account of outbreak of coronavirus (Covid-19) pandemic.

CRM No.30235 of 2020

For the reasons given in the application, it is allowed and order dated 23.11.2020 passed by the trial Court is permitted to be placed on record as Annexure P-9.

CRM-M-25750 of 2020

Instant petition has been filed under Section 439 of the Code of Criminal Procedure seeking grant of regular bail to the petitioner in complaint case NCB Crime No.31 dated 22.05.2017 registered under Sections 18(b)/27-B/27-A/29 of Narcotics Drugs and Psychotropic Substances Act 1985 (for brevity hereinafter called “the NDPS Act”) by Narcotics Control Bureau, Chandigarh Zonal Unit, Sector-25, Chandigarh.

Facts, in brief, are that an FIR was registered on the basis of a secret information to the effect that two persons, namely, Ram Kumar and

Krishan Murari, who are involved in trafficking of opium, are bringing huge quantity of opium and are reaching Ellenabad at around 5:15 a.m on 22.05.2017 to deliver the contraband to Kamal Singh (present petitioner). On receiving this information, raiding party reached the Bus Stand, Ellenabad. Krishan Murari and Ram Kumar were apprehended while handing over a bag to Kamal Singh, petitioner, who was already waiting for them on his motorcycle. A search of the bag was conducted and 4.540 kg opium was recovered. The petitioner was arrested on 23.05.2017.

Counsel for the petitioner has argued that the petitioner, who is 71 years old, has been falsely framed. According to the counsel, the petitioner has a clean past and the alleged recovery was not effected from the petitioner. His contention is that keeping in view his period of custody and the fact that trial is not progressing because of the pandemic, the petitioner deserves to be released on bail. He has placed reliance upon the order dated 25.07.2019 (Annexure P-3) passed by this Court in CRM-M-35079 of 2018 titled as 'Ram Kumar Vs. State of Haryana and another' to submit that the case of the petitioner is at par with the co-accused, who has been granted the concession of regular bail.

Opposing the petition, State counsel upon instructions from Investigating Officer Avdesh Kumar, has submitted that the petitioner was caught by the raiding team at the spot and commercial quantity of contraband was recovered from him. She has made a reference to the affidavit of Intelligence Officer, NCB, Chandigarh filed in reply to the petition to contend that the petitioner has a criminal past, which he has not disclosed. Still further, it is her submission that the trial is at an advanced stage and the petitioner does not deserve the concession of bail.

I have considered the rival submissions of the parties.

The petitioner has allegedly been caught red handed alongwith co-accused by a team of NCB officials and huge contraband has been recovered from him, which falls within the ambit of commercial quantity as per the schedule appended with the NDPS Act. The rigour of Section 37(1)(b) of the NDPS Act is attracted and the petitioner is not entitled to grant of bail.

From the material placed on record, it is apparent that the petitioner is a habitual offender and is involved in four cases including the present one. The details thereof are as under:-

- i) FIR No.46 dated 22.02.2003 registered under Section 18 and 61 of the NDPS Act, 1985 at P.S.Ellenabad, District Sirsa in which the petitioner has been convicted, vide judgment dated 26.07.2004;
- ii) Crime No.31/2007 dated 22.05.2017 registered at NCB Chandigarh under Section 8, 18, 29, 60 and 62 of the NDPS Act (the present FIR);
- iii) FIR No.55 dated 13.03.2016 registered under Section 25 of Arms Act, 1959 at P.S.Ellenabad, District Sirsa in which the petitioner has been acquitted, vide judgment dated 14.02.2019; and
- iv) FIR No.111 dated 22.05.2017 registered under Section 25 of Arms Act, 1959 at P.S.Ellenabad, District Sirsa in which the petitioner has been acquitted, vide judgment dated 04.04.2019.

It is clear that the petitioner has criminal antecedents. He stands convicted in an FIR registered against him under the provisions of the NDPS Act. The petitioner has failed to disclose this crucial fact in the petition, rather a categorical assertion has been made by the petitioner in para 13 of the petition, which is reproduced as under:-

“13. That the petitioner is not involved in any case under the NDPS Act. The petitioner has neither been convicted in a case under NDPS Act nor is any case against the petitioner pending anywhere.”

The relief of bail is not meant for a person who has a criminal past and has approached the Court with tainted hands.

Co-accused, Ram Kumar has been ordered to be released on bail by this Court, vide order dated 25.07.2019 as he is suffering from spine cancer. The petitioner cannot claim parity with him. Still further, the trial is at an advanced stage which is apparent from the affidavit filed by the respondent. Out of 10 prosecution witnesses, evidence of 08 witnesses has been recorded and two witnesses remain. Both the witnesses are independent witnesses and their statements are very material but the same could not be recorded due to the situation arising due to the spread of the contagion. An apprehension has been expressed that in case the petitioner is enlarged on bail, he may try to influence the two independent witnesses and tamper with the evidence.

Keeping in view the above circumstances, the gravity of the offence, the antecedents of the petitioner and the fact that the petitioner has tried to hoodwink the Court, the petitioner is not entitled to grant of regular

bail. The petition is, accordingly, dismissed.

It is clarified that any observation made hereinabove shall not be construed to be an expression on the merits of the case.

(SUVIR SEHGAL)
JUDGE

December 16, 2020
anju/savita

Whether Speaking/Reasoned	Yes
1. I have a clear idea of what I want to say	Yes
2. I can express my thoughts clearly	Yes
3. I can listen to others and understand their point of view	Yes
4. I can think logically and make decisions	Yes
5. I can solve problems and make plans	Yes
6. I can communicate effectively with others	Yes
7. I can work independently and take responsibility	Yes
8. I can work well with others in a team	Yes
9. I can manage my time and resources	Yes
10. I can adapt to change and handle stress	Yes
11. I can learn from my mistakes and improve myself	Yes
12. I can be creative and think outside the box	Yes
13. I can be persistent and not give up easily	Yes
14. I can be confident and assertive	Yes
15. I can be empathetic and understand others' feelings	Yes
16. I can be organized and keep track of things	Yes
17. I can be flexible and open-minded	Yes
18. I can be curious and ask questions	Yes
19. I can be patient and wait for my turn	Yes
20. I can be respectful and follow rules	Yes
21. I can be honest and tell the truth	Yes
22. I can be kind and helpful to others	Yes
23. I can be responsible and do my best	Yes
24. I can be brave and try new things	Yes
25. I can be calm and stay focused	Yes
26. I can be confident and believe in myself	Yes
27. I can be respectful and listen to others	Yes
28. I can be responsible and take care of my things	Yes
29. I can be kind and share with others	Yes
30. I can be brave and stand up for myself	Yes
31. I can be calm and control my emotions	Yes
32. I can be confident and show my abilities	Yes
33. I can be respectful and follow instructions	Yes
34. I can be responsible and complete my tasks	Yes
35. I can be kind and be a good friend	Yes
36. I can be brave and face my fears	Yes
37. I can be calm and stay composed	Yes
38. I can be confident and accept praise	Yes
39. I can be respectful and be polite	Yes
40. I can be responsible and manage my money	Yes
41. I can be kind and be a good neighbor	Yes
42. I can be brave and try new foods	Yes
43. I can be calm and stay happy	Yes
44. I can be confident and show my talents	Yes
45. I can be respectful and be a good citizen	Yes
46. I can be responsible and take care of my health	Yes
47. I can be kind and be a good brother/sister	Yes
48. I can be brave and try new activities	Yes
49. I can be calm and stay positive	Yes
50. I can be confident and believe in my dreams	Yes

Whether Reportable	Yes
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