

IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH

CRM-M-32114 of 2020

Date of decision: 16.10.2020

Tarlochan Singh

... Petitioner

Vs.

State of Punjab

... Respondent

**CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL**

Present:- Mr. Fariad Singh Virk, Advocate  
for the petitioner.

Mr.M.S.Nagra, Assistant Advocate General, Punjab  
for the respondent-State.

**SUVIR SEHGAL J.**

The hearing of this matter has been taken up through video conferencing due to outbreak of coronavirus (Covid-19) Pandemic.

This is the second petition filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the petitioner in First Information Report No.282 dated 31.08.2012 registered under Section 21 of Narcotics Drugs Psychotropic Substances Act 1985 (for short “the NDPS Act”), Section 420 of Indian Penal Code, 1860 and Section 52-A of Prisons Act, 1894 at P.S.Tripuri, Patiala, District Patiala.

FIR in question was registered on the basis of a letter received from the Superintendent, Central Jail, Patiala, whereby, it was informed that on account of a scuffle between two convicts in the jail premises, a search of the cells of the prison was conducted and 10 grams of smack, 02 mobile phones and sim cards were recovered from the barracks where the petitioner and co-accused were lodged.

Counsel for the petitioner has argued that a false case has been registered as the alleged recovery cannot be connected with the petitioner. Counsel submits that the petitioner was granted the concession of regular bail by the learned Additional Sessions Judge, vide order dated 13.02.2013 (Annexure P-2) but he remained behind bars as he was undergoing sentence in another case. After the application for suspension of sentence of the petitioner was allowed and he was granted interim bail by this Court, vide order dated 13.03.2015 (Annexure P-4) passed in CRM No.4057 of 2015 in CRA-S-No.2341-SB of 2011, the petitioner was released from the jail but he was not aware of the pendency of the instant FIR and on account of non-appearance, he was declared as Proclaimed Offender by the trial Court on 07.01.2016 (Annexure P-5). Counsel has placed reliance upon judgment dated 09.03.2017 (Annexure P-6) passed by the Special Court, Patiala, whereby, the co-accused of the petitioner were convicted under Section 21(b) of the NDPS Act and sentenced to undergo imprisonment for 07 months and to pay a fine of Rs.1,000/- each. Counsel urges that the petitioner has already undergone more than 07 months and on the principle of parity, he deserves to be enlarged on bail.

Opposing the petition, State counsel, upon instructions from ASI Nirmal Singh, submitted that the petitioner was undergoing sentence as he stood convicted for 10 years in FIR No.66/2007 registered under Section 15 of the NDPS Act at Police Station Harike Patan, District Tarn Taran. Counsel submits that the petitioner was declared a Proclaimed Offender and he is yet to be tried for the offence charged with in the present FIR. He has filed the custody certificate dated 16.10.2020 which is taken on record and copy thereof, has been supplied to the counsel for the petitioner.

I have considered the rival submissions of the parties.

The petitioner is a convict under the NDPS Act and was undergoing sentence of 10 years awarded to him by the Special Court. He has allegedly been found to be in possession of smack and mobile phones. He has been charge-sheeted for the offences under Section 21 of the NDPS Act, Section 52-A of the Prisons Act, 1894 and Section 420 IPC on 04.06.2014 and is yet to face trial. Even after his enlargement on bail from the prison after his sentence was suspended in FIR No.66/2007, he did not appear before the trial Court, as a result of which he was declared as a Proclaimed Offender, in January 2016. He was re-arrested almost four years later on 13.03.2020 and is in incarceration since then. His plea that he was not aware of the pendency of the present FIR is not believable. The petitioner cannot claim parity with the co-accused as they have faced trial and have been convicted by the learned Additional Sessions Judge, vide judgment dated 09.03.2017 (Annexure P-6). The petitioner, who is a Proclaimed Offender, cannot be given the concession of bail.

Still further, the first petition for regular bail (CRM-M-15816 of 2020) filed by the petitioner before this Court, was dismissed as withdrawn on 03.07.2020 (Annexure P-8) after arguments and the second petition has been filed within three months thereafter. No change in the factual situation or circumstances has been shown. No new ground has been urged by the counsel during the course of arguments of the present petition. Without there being any change in the circumstances, the second petition would be deemed to be seeking review of the earlier judgment which is not permissible in criminal law as has been held by the Hon'ble Supreme Court in **Hari Singh Mann Vs. Harbhajan Singh Bajwa (2001) 1 SCC 169;**

State of Madhya Pradesh Vs. Kajad 2001 SCC (Criminal) 1520 and  
State of Maharashtra Vs. Capt.Buddhikota Subha Rao 1989 Supl.(2)  
SCC 605.

In view of the above, no case is made out for grant of regular  
bail to the petitioner. The second petition for bail filed by the petitioner is  
sans merit and is hereby 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

October 16, 2020  
savita

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|---------------------------|-----|
| Whether Speaking/Reasoned | Yes |
| Whether Reportable        | Yes |