

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(205)

CRM No. M-33385-2020

Date of Decision : 02.11.2020

KAMALJIT KUMAR @ HARSH

....Petitioner

Versus

STATE OF PUNJAB

.....Respondent

(through video conferencing)

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Ritesh Pandey, Advocate
for the petitioner.

Mr. Sandeep Singh Deol, Deputy Advocate General, Punjab.

Harsimran Singh Sethi, J. (Oral)

Present is the second petition filed under Section 439 Cr.P.C. for the grant of regular bail to the petitioner in respect of FIR No. 157 dated 21.09.2019, under Sections 21 and 22 of the NDPS Act, 1985 as well as under Sections 420, 467, 468, 471 IPC, registered at Police Station City Gurdaspur, District Gurdaspur.

Learned counsel for the petitioner argues that the petitioner is a Chemist and also has a licence issued under the Drugs and Cosmetic Act, 1940, which licence has been appended as Annexure P-2 with the present petition. Learned counsel for the petitioner submits that once the petitioner

has permission to keep the drug, which has been recovered from his possession, no violation of the NDPS Act can be alleged against the petitioner in any manner. Learned counsel further submits that the confession/disclosure statement, which is being relied by the respondent-State, is impermissible to be taken into account for holding the petitioner guilty in any manner keeping in view the settled principle of law. The prayer of the petitioner is that as Rahul Kumar @ Mintu, who is also a co-accused, has been granted the benefit of regular bail, the same benefit be granted to the petitioner as well.

Notice of motion.

Mr. Sandeep Singh Deol, Deputy Advocate General, Punjab, who has joined the proceedings through video conference, keeping in view the service of advance copy of petition, accepts notice on behalf of State of Punjab.

Learned State counsel submits that in the present case, the recovery of the banned substance to the tune of 15,000 tablets of Tramadol Hydrochloride has been done from the house of the petitioner. Learned State counsel further submits that in the present case, the disclosure statement of co-accused is supported by recovery of the banned substance from the petitioner. It is further submitted by the learned State counsel that though the petitioner was having a licence under the Drugs and Cosmetic Act, 1940, which has been appended as Annexure P-2 with the present petition, but with regard to the banned substance, which has been recovered from the petitioner, the State has already issued instructions on 29.07.2019 informing all the concerned including chemists that hence-forth, a Retailer cannot keep more than 500 tablets, a wholesaler cannot keep 5000 tablets

and C & F Agent cannot keep more than 50000 tablets, description of which was given in those instructions and there being permission from the Drug Controller. Learned State counsel submits that the petitioner, who is a retailer, cannot keep more than 500 tablets Tramadol Hydrochloride as no permission has been taken by the petitioner from the competent authority to store such a huge quantity of the banned substance, therefore, the prayer of the petitioner for the grant of regular bail be declined.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

In the present case, the recovery of the banned substance has been done from the house of the petitioner. It is not disputed by learned counsel for the petitioner that he did not had the authority to keep such a huge quantity of banned substance even though, the petitioner is a retailer. That being so, the recovery of the banned substance from the petitioner is prima-facie violation of the NDPS Act, 1985.

With regard to the grant of bail to another co-accused, namely, Rahul Kumar @ Mintu, learned State counsel has differentiated the case of the said Rahul Kumar @ Mintu with that of the petitioner. Learned State counsel has clarified that no recovery of any banned substance was done from Rahul Kumar @ Mintu whereas, a huge quantity of the banned substance has been recovered from the house of the petitioner and, therefore, petitioner cannot claim parity with co-accused Rahul Kumar @ Mintu for the grant of benefit of regular bail.

Keeping in view the above, no ground is made out to grant the petitioner the benefit of regular bail.

Dismissed.

However, it is made clear that anything observed herein shall not be construed to be an expression of any opinion on the merits of the case.

November 02, 2020
kanchan/naresh.k

(HARSIMRAN SINGH SETHI)
JUDGE

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