

202.

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-35231-2019 (O&M)

Date of decision: 25.09.2020

EBUKA ALIAS PRINCE

... Petitioner

versus

STATE OF PUNJAB

.... Respondent

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Arjun Veer Sharma, Advocate, for the petitioner.

Mr. S.P.S. Tinna, Additional Advocate General, Punjab.

HARI PAL VERMA, J.(Oral)

The matter has been taken up for hearing through video conferencing due to outbreak of COVID-19.

CRM-23344-2020

Prayer in this application filed under Section 482 Cr.P.C. is to place on record the document Annexure P-6 (colly).

For the reasons stated in the application, same is allowed and the document Annexure P-6 (colly) is taken on record.

CRM-M-35231-2019

The petitioner, who is a citizen of Nigeria and presently residing at Gali No.17, Vipran Garden, Uttam Nagar, New Delhi and is in custody, has filed the present petition under Section 439 Cr.P.C. for grant of regular bail, pending trial, in case FIR No.58 dated 04.06.2018 registered under Sections 21, 29, 61, 85 of NDPS Act at Police Station Amloh, District Fatehgarh Sahib.

As per the FIR, on 04.06.2020, when the police party was

patrolling in a government car in search of bad elements and the party was present at Bus Stand Saunti, then a car bearing No.PB-23-W-9946 mark i-20 of white colour was seen coming from Mandi Gobindgarh side and on seeing the police party, the occupants of the car got perplexed and tried to turn their car. But in the process, they were apprehended by the police party. On inquiry, the driver of the car told his name as Amit Kumar Sharma @ Lalli, whereas the person sitting on the side of the driver told his name as Gurjant Singh @ Deepa and the lady sitting on the rear side informed her name as Paramjit Kaur. The accused were apprised of their legal right to be searched before the Illaqa Magistrate or Gazetted Officer, to which, the accused persons stated that they want to get their search in the presence of Gazetted Officer. Accordingly, the DSP Manpreet Singh was informed and he reached at the spot and informed the accused persons about his designation. The DSP informed that he has suspicion that the accused persons are in possession of contraband and wants to get the accused persons and their car searched. During search, a polythene was recovered from the right pocket of Amit Kumar Sharma, which contained 60 grams powder. On search of Gurjant Singh, a polythene was recovered from the right pocket of his *capri* which contained 60 grams powder. Search of Paramjit Kaur was conducted by a lady constable Rajinder Kaur and from her purse, powder weighing 30 grams was recovered.

The present petitioner has been apprehended on the disclosure statement of the co-accused Amit Kumar on 05.06.2018 and 350 grams intoxicant powder, having salt Diacetylmorphine, has been recovered which falls under commercial quantity.

Counsel for the petitioner has argued that apart from the fact that Section 166 Cr.P.C. has not been complied with, petitioner is in custody since 05.06.2018. There is no other case against him. The petitioner was nominated as an accused on the basis of disclosure statement of the co-accused Amit Kumar. The allegation that the petitioner jumped from the 3rd floor when the police party visited him, cannot be accepted, as after jumping from 3rd floor, no one can run away. He has further argued that it is improbable that the petitioner can escape in the presence of police party.

Counsel for the petitioner has relied upon judgments of this Court passed in ***CRM-M-7864-2017*** titled as ***Ugochukwu Henry Versus State of Punjab, dated 14.03.2017***, ***CRM-M-37253-2016*** titled as ***Festus Ugochukwu Versus State of Punjab, dated 07.12.2016*** and ***CRM-M-2193-2019*** titled as ***Ameca Ofer Versus State of Punjab, dated 07.09.2020***.

Learned State counsel has filed the custody certificate which is taken on record. She submits that no doubt the petitioner is in custody since 05.06.2018, but he being Nigerian citizen and recovery of 350 grams intoxicant powder having salt Diacetylmorphine has been effected from him, in the event of his being admitted on bail, there is a possibility that he may leave the country, frustrating the very trial which is already at an advance stage. As against 12 witnesses cited by the prosecution, 9 witnesses have already been examined and the case is now fixed for 07.10.2020. Only three witnesses are left out which are formal one.

I have heard learned counsel for the parties.

Under similar circumstances, the accused have been admitted on bail by this Court. In ***CRM-M-7863-2017*** (supra) where the accused

happens to be Nigerian citizen and was allegedly found in possession of 300 grams of heroin, was admitted on bail by this Court vide order dated 14.03.2017. Similarly, in the case of **CRM-M-2193-2019** (supra), for having found in possession of 300 grams of heroine and the accused being Nigerian citizen, the Court has admitted the accused on bail as there was no headway in the trial and not likely to be concluded in the near future on account of Covid-19 pandemic.

The courts are otherwise working in a restricted manner and taking only very urgent matters. Regular trials are not being taken up by the trial Courts. Accordingly, considering the long custody that is about 2 years, 3 months and 15 days, there being no other case against the petitioner and the trial not likely to be concluded in the near future on account of Covid-19 pandemic, this Court deems it appropriate to admit the petitioner on bail.

Accordingly, the present petition is allowed and the petitioner is admitted on regular bail subject to his furnishing adequate bail bonds/surety bonds including two local sureties, to the satisfaction of trial Court/Duty Magistrate, or any other condition which the trial Court may deem appropriate.

The observations made hereinabove shall not be construed as an expression on the merits of the case and the trial court shall decide the case on the basis of available material.

(HARI PAL VERMA)
JUDGE

25.09.2020
sanjeev

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