

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

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CRM-M NO. 41032 of 2019

Date of decision : 29.01.2020

Kulvir Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Naveen Sharma, Advocate
for the petitioner.

Mr. Sandeep Singh Deol, D.A.G. Punjab
for respondent-State.

ARUN KUMAR TYAGI, J. (ORAL)

The petitioner has filed the present (second) petition under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail in case FIR No. 114 dated 25.07.2018 registered under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "the NDPS Act") at Police Station Goraya, District Jalandhar.

As per the prosecution version, on 25.07.2018 police party headed by ASI Harjinder Singh on the basis of secret information conducted *naka bandi* and stopped car driven by the petitioner who was accompanied by his wife in conductor seat and co-accused Honey in the rear seat and on search as per the prescribed procedure recovered 500 grams of Heroine each from possession of the petitioner and his co-accused Honey Singh. The petitioner has filed the present application for grant of regular bail.

Learned State Counsel has appeared and opposed the bail application.

I have heard learned Counsel for the petitioner and learned State Counsel and perused the relevant record.

Learned Counsel for the petitioner has submitted that the petitioner has been falsely implicated in the case. Mandatory provisions of Section 42 of the NDPS Act were not complied with. No independent witness was joined at the time of alleged recovery. As per FSL Report the quantity of heroine was 28.8 per cent. At the time of alleged seizure the Investigating Officer observed that the contraband recovered was heroine without there being any kit for chemical examination and making of such observations by the Investigating Officer are suggestive of the heroine having been planted on the petitioner. The trial is likely to take long time. The petitioner is not involved in any other case and no useful purpose will be served by further detention of the petitioner in custody. Therefore, the petitioner may be granted regular bail. In support of his arguments, learned Counsel for the petitioner has also placed reliance on the observations made by Five Judge Bench of Hon'ble Supreme Court *in Karnail Singh Versus State of Haryana 2009(5) R.C.R (Criminal) 515*.

On the other hand, learned State Counsel has argued that the petitioner is accused of having kept commercial quantity of heroine in his conscious possession. Rigors of Section 37(1)(b) of the NDPS Act are applicable in the present case. The petitioner does not deserve grant of regular bail. Therefore, the present petition for grant of regular bail to the petitioner may be dismissed.

There is no dispute with principles of law laid down in Karnail Singh's case. However, the question as to whether there was non-compliance of the Section 42 of the NDPS Act and if so the effect thereof

cannot be determined at this stage and this Court is not required to weigh the evidence and assess the merits of the case so as to find out whether there was sufficient material for indictment of the petitioner.

Keeping in view the facts and circumstances of the case, nature of accusation and the prima facie evidence in support thereof, applicability of Section 37(1)(b) of the NDPS Act due to recovery of commercial quantity of the contraband, absence of any such material for furnishing reasonable grounds for this Court to conclude that the petitioner has not committed the offence or that the petitioner will not commit any offence under the NDPS Act if released on bail and also the fact that the trial can be expedited, I am of the considered view that the petitioner does not deserve grant of regular bail. Therefore, the petition is dismissed.

In view of the observations made by Hon'ble Supreme Court in *Doongar Singh Vs. State of Rajasthan 2018 (1) RCR Criminal 256*, *Thana Singh Vs. Central Bureau of Narcotics 2013 (1) R.C.R(Criminal) 861 and State of U.P Vs. Shambhu Nath Singh: 2001(2) RCR (Criminal) 390*, the trial Court is directed to expedite the trial of this case and record prosecution evidence by adopting the method of trial in Session by giving block of dates and issuing requisite Court process against the prosecution witnesses. In case of non attendance of the official witnesses in compliance to the Court process issued by it, the trial Court shall be at liberty to file complaint for their prosecution under Section 174 of the Indian Penal Code, 1860 or take action under Section 350 of the Cr.P.C against defaulting officials.

However, it is clarified that these observations have been made in this order strictly for disposal of the present petition for grant of regular

bail and nothing in this order shall be treated as expression of any opinion on merits so as to bind or influence the trial Court in decision of the question of guilt or innocence of the petitioner on merits.

29.01.2020

Rajeev (rvs)

(ARUN KUMAR TYAGI)
JUDGE

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