

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

**CRM-M-41039 of 2019
Date of Decision:-26.02.2020**

Gurpreet Singh @ Gopi

...Petitioner

Versus

State of Punjab

...Respondent

CORAM:- HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Divjyot S. Sandhu, Advocate
for the petitioner.

Mr. Sarabjit Singh Cheema, AAG, Punjab.

JASGURPREET SINGH PURI J.(Oral)

Petitioner-gurpreet Singh @ Gopi has filed the present petition under Section 439 Cr.P.C. for grant of regular bail pending trial in case FIR No. 31 dated 01.03.2019, under Section 22 of NDPS Act, registered at Police Station Kotwali, District Kapurthala.

Learned counsel for the petitioner has submitted that in the present case false FIR has been registered against him and he was arrested on 01.3.2019. Thereafter, he was admitted on interim bail on 22.4.2019 as the report of the FSL was not received by the police. Thereafter, on receipt

of the report of the FSL, the petitioner himself surrendered before the police on 04.9.2019 and since then he is in custody. He has further submitted that the total period of custody of the petitioner comes to 04 months and 20 days as per custody certificate dated 28.09.2019 and as on date he has undergone more than nine months. Learned counsel has further submitted that even as per FIR, the allegation against the petitioner is that the petitioner allegedly threw a bag, which was found by the police, from which the quantity of 115 grams of contraband containing alprazolam was recovered. He has further argued that the quantity of the alleged contraband recovered was marginally above the prescribed commercial quantity, which is 100 grams, therefore, learned counsel has submitted that there can be an error in the measurement of the alleged recovered contraband. He has further argued that since the alleged recovered contraband is marginally above the prescribed commercial quantity, he may be granted bail in this case. Furthermore learned counsel for the petitioner has submitted that the petitioner is not involved in any other case and he is a young boy of 22 years and that this case has been wrongly planted upon him by the police. He has further submitted that even otherwise also the challan in the present case has not been presented and he is in custody since more than nine months and otherwise also he is entitled to default bail.

Learned State counsel has filed the custody certificate of the petitioner by way of affidavit of Baljit Singh, Deputy Superintendent, Central Jail, Kapurthala. Same is taken on record. On instructions from ASI Kulwinder Singh, he states that so far as the custody period of the

petitioner is concerned, there is no dispute with regard to that and it is also not disputed that the challan has not been presented in the Court. He has further submitted that so far as concession of grant of default bail is concerned, the petitioner can be remitted back to the trial Court for that purpose. On instructions, he has further submitted that so far as the present case is concerned, it is correct that the petitioner is not involved in any other case.

I have heard learned counsel for the parties and gone through the records.

The undisputed position in the present case is that the petitioner is in custody since more than nine months and still the investigation is not complete and challan has not been presented. This Court would not go into the issue with regard to grant of default bail but so far as the merits of the present case is concerned, it is an admitted position that the petitioner is not involved in any other case and the quantity of the contraband, which has allegedly been recovered from the petitioner is marginally above the commercial quantity. Learned counsel for the petitioner has also relied upon the judgment passed by co-ordinate Bench of this Court in **Pritam Kaur @ Bawi vs. State of Punjab**, decided on 31.1.2020 in CRM-M-44066-2019, **Satnam Singh @ Sattu vs. State of Punjab**, decided on 17.09.2019 in CRM-M-30672-2019 and **Hardeep Singh @ Deepa vs. State of Punjab**, decided on 30.09.2013 in CRM-M-26153-2013 to say that when the recovered quantity is slightly above the commercial quantity then in that situation there can be possibility of error

and therefore, this matter can be considered at the time of grant of bail.

I am of the considered opinion that in the present case the alleged quantity of contraband is marginally above the commercial quantity and that solely cannot become the ground for the grant of bail. At the time of considering the bail, the Court has to consider all the other relevant factors as well. In the present case, however the petitioner is stated to be not involved in any other case coupled with the fact that there was long delay in conducting the investigation and the challan has still not been presented in the Court. So far as the bar which has been mentioned under Section 37 of the NDPS Act is concerned, departure can always be made in view of the peculiar facts and circumstances of the case. It is not the case of the State that the petitioner if enlarged on bail then he may tamper with the record or influence any witnesses or that he may repeat the offence. So far as the merits of the case are concerned, it is not an appropriate stage where any observation can be made with regard to the involvement of the petitioner but the fact that contraband was allegedly recovered from the bag allegedly thrown by petitioner may create a doubt upon prosecution story.

Considering the above background of the case as well as the fact that the contraband recovered from the petitioner was marginally above the commercial quantity, this Court is of the opinion that further detention of the petitioner would not be justified. Therefore, without meaning any expression of opinion on the merits of the case petition is allowed and the petitioner is ordered to be released on regular bail subject to his furnishing requisite bail bonds/surety bonds to the satisfaction of the trial Court at

Kapurthala.

However, nothing expressed herein above shall be construed as an expression of opinion on merits of the case before the learned trial Court and the trial Court shall decide the case on the basis of available evidence on record.

The petition is allowed.

February 26, 2020
Vijay Asija

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No