

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

**CRM-M No.43988 of 2019 (O&M)
Decided on: 20.01.2020**

Budhi Parkash

....Petitioner

Versus

Union of India, NCB, Chandigarh

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Gaurav S. Pathania, Advocate for the petitioner.

Ms. Sharmila Sharma, Advocate
for the respondent.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this 2nd petition is for grant of regular bail to the petitioner under Section 439 of the Code of Criminal Procedure (in short 'Cr.P.C.') in crime case No.41/2018 dated 09.10.2018, for offence punishable under Sections 8, 20, 25, 29 and 60 of the Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station NCB, Chandigarh.

The first petition seeking regular bail to the petitioner was dismissed as withdrawn on 14.03.2019.

Counsel for the petitioner has submitted that the petitioner is not involved in any other case and on the basis of the long custody, this 2nd petition is filed.

Counsel for the petitioner has argued that as per the allegations in the complaint filed by NCB on receiving a secret information that the co-accused – Chaman Singh is bringing charas

from Chamba to Ludhiana, a raid was conducted and on 09.10.2018 at about 07:30 PM, a Mahindra Pick-up vehicle bearing No.HP-73-A-1137, in which 03 persons were traveling i.e. Dharmender Kumar, who was driving the vehicle, Chaman Singh, who was sitting next to the driver and the petitioner was referred to as 3rd passenger of the vehicle were detained.

Counsel for the petitioner has further submitted that there on 10.10.2018, 2.5 Kgs of charas was recovered from the vehicle and Chaman Singh was arrested and the petitioner was let off as there was no evidence against him. It is also submitted that thereafter, on the basis of the disclosure statement of Chaman Singh on 11.10.2018, again recovery of 12.7 Kgs of charas was made from the cavity of the vehicle and as per the said disclosure statement of Chaman Singh, the petitioner and other accused Dharmender Kumar were also having the knowledge about the same.

Counsel for the petitioner has further argued that the petitioner was arrested on 12.10.2018 and on that day, his disclosure statement was also recorded that he had the knowledge about the contraband concealed in the vehicle. It is also submitted that when the second recovery was effected, the petitioner was not called and in his absence, the recovery was effected and even the disclosure statement of the co-accused was recorded prior to arrest of the petitioner and therefore, it will be a matter of trial to be decided during the course of trial, whether the said disclosure statement is admissible in evidence or not as the second recovery was never effected in the presence of the petitioner.

Counsel for the petitioner has further argued that the petitioner is in custody since 12.10.2018; out of 18 PWs only 03 PWs have been examined so far.

In reply, counsel for the respondent – CBI, has not disputed the dates and the factual position argued by counsel for the petitioner. It is submitted that the next date of hearing fixed before the trial Court is 24.01.2020 for recording further evidence of the prosecution.

Without commenting anything on merits of the case, considering the fact that the petitioner is in custody since 12.10.2018; only 03 PWs have been examined so far out of 18 PWs; he is not involved in any other case and also in view of the fact that he was at the time of the first recovery was let off by the NCB as there was no evidence against him and later on, he was involved only on the basis of the disclosure statement of Chaman Singh, from whom the recovery was effected and also in view of the fact that the custodial interrogation of the petitioner is not required and it will take some time in conclusion of the trial, this petition is allowed and the petitioner is directed to be released on bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate.

However, it will be open for the prosecution to apply for cancellation of bail of the petitioner, in case he is found involved in any other case or misusing the concession of bail, in any manner.

(ARVIND SINGH SANGWAN)

JUDGE

20.01.2020

yakub

Whether speaking/reasoned

Yes/No

Whether reportable:	Yes/No
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