

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-42633 of 2019
Date of decision:04.09.2020

Avtar Singh alias Minta

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Kunal Vinayak, Advocate, for the petitioner.

Mr. Amar Ashok Pathak, Addl.A.G.Punjab
for the respondent-State.

SUVIR SEHGAL J.

The hearing of this case has been taken up through video conferencing due to outbreak of coronavirus (Covid-19) pandemic.

Petitioner, Avtar Singh @ Minta, has filed this petition under Section 439 of the Code of Criminal Procedure for grant of regular bail in case FIR No.0288 dated 10.07.2016 (Annexure P-1) registered under Sections 21 and 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for brevity hereinafter referred to as “the NDPS Act”) at Police Station Civil Lines, Amritsar.

Counsel for the petitioner has argued that no doubt, the petitioner is involved in some petty offences but he is not a drug peddler. He submits that a totally false case has been registered against the petitioner which is apparent from the fact that he has allegedly been apprehended from a public thoroughfare and 260 grams of intoxicating powder was recovered

from him, but no independent witness was associated before his search was conducted. Counsel contends that mandatory provisions of Section 50 of the NDPS Act, have not been complied with. He argues that no offer was made to the petitioner to get himself searched in the presence of a Gazetted Officer or a Magistrate nor was the petitioner produced before any Gazetted Officer or Magistrate. To buttress his argument, he has referred to the cross-examination of HC Jagbir Singh, PW1. Still further, counsel contends that the intoxicant which has allegedly been recovered from the petitioner is Diacetylmorphine weighing 260 grams which is marginally above the commercial quantity. He submits that the petitioner is in custody from the day of the registration of the FIR.

Per contra, counsel for the State has opposed the petition on the ground that the contraband recovered from the petitioner falls within the scope of commercial quantity. He submits that the petitioner has a criminal record and is involved in a number of other cases and stands convicted in two matters. He has filed the custody certificate dated 03.09.2020 which is taken on record and a copy thereof, has been supplied to the counsel for the petitioner. Upon instructions from SI Parminder Singh, he submits that the charge was framed against the petitioner on 26.04.2019 and the prosecution evidence is going on. Still further, he submits that it will not be in the interest of the public to release such a person on bail.

I have considered the rival submissions of the counsel for the parties.

An analysis of the custody certificate shows that the petitioner is involved in 08 other matters. The details of the said cases are reproduced in the chart which is as under:-

A) Details of pending under trial cases

Sr. No.	Particulars
1	FIR No.237 dated 16.06.2016, under Sections 380/457 IPC, P.S. Civil Lines, Amritsar.
2	FIR No.234 dated 13.06.2016, under Sections 380/457 IPC, P.S. Civil Lines, Amritsar.
3	FIR No.246 dated 21.06.2016, under Sections 389/402 IPC, 25/54/59 Arms Act, P.S.Civil Lines, Amritsar.
4	FIR No.157 dated 08.05.2016, under Sections 380/457 IPC, P.S.Civil Lines, Amritsar.
5	FIR No.153 dated 05.05.2016, under Sections 380/457 IPC, P.S.Civil Lines, Amritsar.

B) Details of conviction in other cases

Sr. No.	Particulars	Convicted by the Court of (with date of judgment and sentence)
6.	FIR No.258 dated 26.06.2016, under Sections 379-B(2)/34 IPC, P.S.Civil Lines, Amritsar.	Sh. Amar Jeet Singh, Addl. Sessions Judge, Amritsar. RI for ten years and fine of Rs.10,000/- ID RI for six months on 15.05.2018.
7.	FIR No.12 dated 05.02.2011, under Sections 457/380 IPC, P.S. B-Division, Amritsar.	Ms. Rajbir Kaur, JMIC, Amritsar. RI for eleven months and fine of Rs.1000/- ID RI for one month on 02.11.2018.

C) Details of acquittal in other cases

Sr. No.	Particulars	Acquitted by the Court of (with date of acquittal)
8	FIR No.236 dated 15.06.2016, under Sections 380/457, IPC, P.S. Civil Lines, Amritsar.	Sh. Simarjit Singh, JMIC, Amritsar on 05.02.2019.

From the above, it is apparent that besides the present case, the petitioner is involved in cases of extortion, snatching, theft and house trespass. He stands convicted in two cases, out of which one conviction is for a period of 10 years under Section 379-B(2) of the Indian Penal Code, 1860. There is an acquittal in the eighth case. It is further borne out from the custody certificate that his custody in the present case is 01 year 10 months and 03 days, which has been calculated from 11.07.2016 to 14.05.2018 as he was convicted in FIR No.258/2016 on 15.05.2018 and he is undergoing sentence in that FIR.

Besides considering the probability of the guilt of the petitioner, the other factor which has to be kept in mind while deciding the petition for grant of bail is as to whether the accused is likely to commit any offence while on bail. The antecedents of the petitioner, which are clear from the chart reproduced above show that he is a person of criminal bent of mind. Pendency of seven cases against him, out of which, he has been convicted in two, clearly demonstrates that it will not be in the larger interest of the society to enlarge him on bail. Consequently, he does not deserve the concession of bail. His petition for bail pending trial is dismissed.

It is clarified that any observation made herein above shall not be construed to be an expression of opinion on the merits of the case.

September 04, 2020
savita

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes
Whether Reportable	Yes