

CRM-M-47351-2019 (O&M)

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

**CRM-M-47351-2019 (O&M).
Decided on: March 04, 2020.**

Nazam Singh

.. Petitioner

VERSUS

State of Haryana

.. Respondent

*** * ***

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

*** * ***

**PRESENT Mr.Aditya Sanghi, Advocate,
for the petitioner.**

**Mr.Munish Sharma, AAG, Haryana,
assisted by SI Dalip Singh.**

JASGURPREET SINGH PURI, J. (ORAL)

Through the present petition filed under Section 439 Cr.P.C., the petitioner prays for the grant of regular bail in FIR No.96 dated 8.9.2019, under Sections 22 (C) of the Narcotic Drugs and Psychotropic Substances Act, registered at Police Station, Odhan, District Sirsa, Haryana.

Learned counsel for the petitioner has argued that the petitioner has been wrongly roped up in the present case. He has further argued that the petitioner is innocent and the present case has been planted

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upon the petitioner. He submits that, in fact, the petitioner was picked up from his house and not from the place which according to the learned counsel for the petitioner has been mentioned in the investigation reports. He has further submitted that the petitioner is in custody since 8.9.2019 and now the challan has been presented. He submits that the procedure contained under the NDPS Act has not been complied with in the present case as such, the petitioner be granted the concession of regular bail.

Per contra, learned State counsel by referring to the short reply filed by way of affidavit of Mr.Arun Singh, SSP, Sirsa, states that another case bearing FIR No.283 dated 26.9.2019, under Section 22 (C) of the NDPS Act, has been registered at Police Station, Sadar, Dabwali, in which 300 intoxicated tablets were recovered from one Raj Kumar son of Madan Lal, who has disclosed that these tablets were purchased by him from present petitioner Nazam Singh prior to his arrest in the present case. He further submits that aforesaid FIR is still pending against the petitioner. It has been further stated in the affidavit that one DVD has also been produced by Seema Kaur wife of the petitioner on 5.12.2019 which has been carefully perused by the deponent. The duration of the video clip contained therein is about 18 seconds in which petitioner/accused Nazam Singh has been shown changing the clothes. In this regard, it has been submitted that the recovery officer has told that when the accused was apprehended in the car in front of his house he was wearing dirty clothes and on the request of the petitioner/accused and his wife, he was allowed to change the clothes by the Deputy Superintendent of Police, Kalanwali in

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whose presence the recovery was effected. For the purpose of changing the clothes, the petitioner was allowed to enter into his house. At that time, HC Rajender Singh and HC Ramesh Kumar had also gone with him. The video clip shows that accused Nazam Singh was changing clothes in the presence of these two officials and his wife Seema Kaur.

Learned State counsel, on the basis of affidavit filed by the SSP, Sirsa, submits that assertion made by the learned counsel for the petitioner that the petitioner was picked up from his house stands totally demolished because he had gone to his house under the custody of aforesaid police officials and he had gone there only for the purpose of changing clothes and therefore, petitioner cannot say that he was picked up from his house. He submits that it is a case where huge recovery has been made from the car of the petitioner and the procedure contained under the NDPS Act, has been complied with by the police and the petitioner was searched in presence of a Gazetted Officer. Learned State counsel has further submitted that in view of the fact that the petitioner is also involved in another case under the NDPS Act, there is every likelihood that he may repeat the offence and influence the witnesses in case he is released on bail. Apart from above, learned State counsel has also stated that though the challan has been presented, however, the charges are yet to be framed and the prosecution evidence is yet to start. He submits that it is not a case where petitioner should be extended the concession of regular bail as such, the present petition be dismissed.

I have heard the learned counsel for the petitioner as well

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as the learned State counsel and have also gone through the record.

On the basis of the record produced before me as well as on the basis of the arguments which have been advanced by learned counsel from both the sides, it is clear that in the present case although the investigation is complete, the charges are yet to be framed. The argument of the learned counsel for the petitioner that the petitioner was picked up from his house has also been disputed by the learned State counsel based upon the affidavit which has been filed by the SSP, Sirsa and in fact, the argument raised by the learned counsel for the petitioner does not inspire confidence because the petitioner had gone inside his house under the supervision of the police officials and that too only for the purpose of changing the clothes.

So far as pendency of another case against the petitioner is concerned, it is also a matter of paramount consideration.

The provisions with regard to bail under the NDPS Act are also governed by the provisions of Section 37 of the NDPS Act, which creates a bar upon the Court to grant bail. However, said bar is not absolute in nature and is subject to departures which have been well defined under the provisions of Section 37 of the NDPS Act, which reads as under:-

“37. Offences to be cognizable and non-bailable

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973,-

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for offences under section 19 or section 24 or Section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless-

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 or any other law for the time being in force, on granting of bail.”

A perusal of above would show that opportunity has to be given to the public prosecutor to oppose the bail and departure can be made only when opportunity is given to the public prosecutor and Court is satisfied that there are reasonable grounds for believing that accused is not guilty of offence and that he is not likely to commit any offence while on bail. It is worthwhile to mention here that both conditions or are co-extensive with each other. Therefore, the Court has to satisfy itself as to whether there are any reasonable grounds for departure under Section 37 of

the NDPS Act or not.

In the present case, so far as the first condition is concerned that whether there is any probability that the petitioner would repeat the offence, State counsel, on instructions, has taken a categorical stand in view of the fact that the petitioner is also involved in similar case which has been mentioned in the affidavit of the SSP, Sirsa and further learned State counsel has specifically stated that there is every likelihood that the petitioner may repeat the offence, if released on bail as such, the first ingredient is not fulfilled. So far as the second ingredient is concerned, there is no reasonable ground on the basis of which it can be said that the petitioner is not guilty of any offence.

Thus, considering the totality of the circumstances of the present case, I do not find it fit and appropriate to admit the petitioner on bail. Consequently, the present petition is dismissed.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant for the purpose of deciding the present petition only.

March 04, 2020.
raj arora

(JASGURPREET SINGH PURI)
JUDGE

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