

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

CRM-M No. 47749 of 2019 (O&M)

Date of decision : 25.09.2020

Jasbir Singh @ Jass

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Kuljit Singh Bal, Advocate
 for the petitioner.

Mr. Sukhbeer Singh, Asst. AG, Punjab.

SUVIR SEHGAL J. (ORAL)

The hearing of the petition has been taken up through video conferencing due to spread of Corona Virus (Covid-19) pandemic.

Present petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail in FIR No. 121 dated 29.07.2019 under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act') and Section 29 of the NDPS Act, added later on, registered at Police Station City Patti, District Tarn Taran, Annexure P-1.

As per the version of the prosecution, two FIRs were registered against the accused-petitioner at Police Station City Patti, District Tarn Taran, the details of which are as follows:-

- (i) FIR No. 121 dated 29.07.2019 under Section 29 of the NDPS Act (Annexure P-1) on the allegation that one Jasbir Kaur was

apprehended with 1900 intoxicating tablets, who during her disclosure statement stated that she had purchased the same from the petitioner. Accordingly, the petitioner was nominated as an accused in the FIR.

- (ii) FIR No. 122 dated 29.07.2019 under Section 22 (Section 29 added later on) of the NDPS Act on the allegation that 50,000 intoxicating tablets were recovered from the petitioner.

Learned counsel for the petitioner has argued that the petitioner is a chemist and is the proprietor of M/s Sukh Medical Store, V.P.O Toot, Tehsil Patti, District Tarn Taran. The petitioner possesses a valid wholesale drug licence (Annexure P-2) in his name issued in Form 21C under the provisions of the Drugs and Cosmetics Rules, to sell, stock or exhibit or offer for sale or distribute drugs. Counsel submits that the licence issued was renewed from 06.06.2016 to 05.06.2021 by the Licensing Authority, Department of Drugs Control, Government of Punjab. By placing reliance upon the GST Invoice bearing No. PKR0000050 dated 14.07.2019 (Annexure P-3), counsel has urged that the petitioner made bulk purchases of various types of tablets and capsules from M/s PKR Remedies, Saharanpur, U.P. It is the argument of the counsel that the petitioner has been named by the co-accused Jasbir Kaur, in her disclosure statement recorded in police custody, which is inadmissible in evidence and no recovery was effected from the petitioner in the instant FIR. He submits that the petitioner is in custody since more than a year and due to the

outbreak of the Corona Virus pandemic, the trial is not likely to conclude in the near future, therefore, the petitioner deserves to be enlarged on bail.

Per contra, learned counsel for the State has opposed the petition on the ground that 1900 tablets of Tramadol, the total weight of which comes to 775 gms. and which falls in the category of commercial quantity under the provisions of the NDPS Act, were recovered from the co-accused. According to the State counsel, since the petitioner has been specifically named as the seller of the intoxicant tablets, the petitioner can not wash his hands off the allegations by simply arguing that the disclosure statement can not be relied upon. State counsel submits that the possession of licence by the petitioner under the Drugs and Cosmetics Act, 1940 is not a defence. Upon instructions from ASI Davinder Singh, learned State counsel submits that the challan was filed on 16.01.2020, charges were framed on 04.02.2020 and there are total 12 prosecution witnesses, but none has been examined. He submits that the trial is under way. He has filed the custody certificate dated 25.09.2020, which is taken on record and on the basis of the same, he urges that the petitioner is involved in a third FIR bearing No. 141 dated 29.11.2017, registered against him under Sections 22, 61, 85 of the NDPS Act.

I have considered the rival submissions of the parties.

From the arguments addressed by the learned counsel for the parties, it is apparent that the petitioner has been nominated as an accused on the basis of the disclosure statement of one Jasbir Kaur. As to whether the

petitioner was involved in the sale and supply of the contraband, is a debatable issue.

An examination of the custody certificate shows that the petitioner was arrested on 01.08.2019 and was released on bail on 28.12.2019. He was taken back in custody on 10.01.2020 and is in incarceration since then. His actual custody period comes to one year, one month and ten days.

Keeping in view the above facts and circumstances, the period of incarceration of the petitioner and the fact that the trial of the case is likely to consume considerable time due to the spread of the contagion, further custody of the petitioner is not justified. Therefore, without expressing any opinion on the merits of the case, it is ordered that the petitioner be enlarged on bail pending trial subject to his furnishing requisite bail bonds/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate.

The petition is accordingly allowed.

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

(SUVIR SEHGAL)
JUDGE

25.09.2020

Maninder

Whether speaking/reasoned : Yes

Whether reportable : Yes