

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

CRM-M No.49463 of 2019 (O&M)

Decided on: 02.07.2020

Dilbar Khan

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Mikhail Kad, Advocate
for the petitioner (through video conferencing)

Mr. A.P.S. Gill, DAG, Punjab.
(through video conferencing)

ARVIND SINGH SANGWAN, J. (Oral)

CRM No.14644 of 2020

Prayer in this application is for preponing the date fixed in
the main petition.

Heard.

For the reasons stated in the application, the same is
allowed and the main case, which is fixed for 21.07.2020, is taken up
today for hearing.

CRM-M No.49463 of 2019

Prayer in this 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 FIR No.163 dated 05.08.2019, for offence punishable
under Sections 22/61 of the Narcotic Drugs and Psychotropic
Substances Act, 1985 (in short 'the NDPS Act') registered at Police
Station City Sangrur, District Sangrur.

Counsel for the petitioner has relied upon the order dated

23.10.2019 passed by this Court in CRM-M No.40672 of 2019 vide which the co-accused of the petitioner namely Nitin Gori, has been granted the concession of regular bail, by passing the following order:-

“Contends that as per the allegations of the prosecution itself, the polythene bag was being carried by co-accused Dilbar Khan as a pillion rider and he threw the same in the bushes, leading to the recovery of 5 strips of intoxicant injections (total 25 in number), but there is not even a whisper that any contraband was recovered from the petitioner. Also contends that petitioner is in custody since 05.08.2019 and after investigation, challan has already been presented on 18.10.2019 and charges are yet to be considered in this case. Further contends that there is no other criminal case pending against the petitioner.

The above factual position is duly acknowledged by learned State Counsel, on instructions from S.I. Darshan Singh, but opposed the bail while submitting that contraband has been recovered from the co-accused and petitioner was driving the motorcycle.

Heard both sides and perused the paper-book.

As per the prosecution case itself, there is no allegation that petitioner was carrying the polythene bag or any contraband was recovered from him, rather the recovery is alleged to have been effected from the polythene bag, which was being carried by the co-accused, namely, Dilbar Khan although as a pillion rider. Thus, in the facts and circumstances of the present case, it would be a debatable question during trial as to whether petitioner was having any knowledge about the contraband and/or merely driving the motorcycle by him would be an offence under the Act. Concededly, in the present case, charges are yet to be framed and there is no other criminal case pending against the petitioner thus,

his further incarceration would not serve any purpose. Consequently, without expressing any opinion on the merits of the case, the present petition is allowed. Petitioner be admitted to bail on his furnishing bail bonds and surety bonds to the satisfaction of learned trial Court/Duty Magistrate concerned.”

Counsel for the petitioner has further submitted that on the same day, the petitioner is involved in two FIRs i.e. after the arrest of the petitioner in the present FIR at 19:05 hours, the petitioner was involved in another FIR No.208, which was registered at 20:28 hours at Police Station Sadar Dhuri whereas the petitioner was already in custody in FIR No.163. It is further submitted that the petitioner is nominated in this FIR on the basis of the disclosure statement and on account of his involvement in the other FIR.

Counsel for the State has not disputed the factual position but opposed the prayer for bail. It is also not disputed that the trial is moving at a slow pace and there are number of witnesses to be examined in this case and the petitioner is in custody since 05.08.2019.

Without commenting anything on merits of the case, considering the fact that the co-accused of the petitioner has already been granted the concession of regular bail by this Court; he is in custody since 05.08.2019; the custodial interrogation of the petitioner is not required and the conclusion of the trial will take some time, 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 is made clear that in case the petitioner is

found involved threatening any of the prosecution witnesses or tried to influence them, in any manner then, it will be open for the prosecution to apply for cancellation of bail of the petitioner.

02.07.2020
yakub

(ARVIND SINGH SANGWAN)
JUDGE

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