

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

214

CRM-M-52039-2019

Date of decision: 04.03.2020

Nishan Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Malkiat Singh Hundal, Advocate
for the petitioner.

Mr. Sandeep Singh Deol, D.A.G., Punjab
for the respondent.

ARUN KUMAR TYAGI, J (ORAL)

The petitioner has filed the present petition under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail in case FIR No.48 dated 13.12.2018 registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "NDPS Act") registered at Police Station Kacha Pacca, District Tarn Taran.

Briefly stated the facts relevant for disposal of the petition are that on 13.12.2018 the police party headed by SI Satnam Singh was on patrolling in private vehicle. When they reached at T Point of village Kacha Pacca and Manihala they saw the petitioner holding a polythene in his right hand. On seeing the police party the petitioner dropped the polythene and tried to escape. The police officials apprehended him and on search recovered 500 intoxicant capsules from the polythene in his possession. On completion of usual steps of investigation, the police charge-sheeted the petitioner. The petitioner being in custody has filed the present petition for grant of regular bail.

Learned State Counsel has appeared and opposed the present petition.

I have heard learned counsel for the petitioner and learned State Counsel and gone through the record.

Learned Counsel for the petitioner has submitted that the petitioner has been falsely implicated in the present case. Mandatory provisions of the NDPS act were not complied with. No independent witness was joined at the time of alleged recovery. The complainant was the investigating officer of the case. The petitioner is in custody for more than six months. Charges were framed against the petitioner on 20.08.2019 but no prosecution witness has been examined in the case so far. The trial is likely to take long time. No useful purpose will be served by further detention of the petitioner in custody. Therefore, the petitioner may be ordered to be released on regular bail.

On the other hand, learned State Counsel has submitted that the petitioner is accused of having kept in his conscious possession commercial quantity of contraband. Rigors of Section 37(1)(b) are applicable to the present case. The petitioner does not deserve the grant of regular bail. Therefore, the petition may be dismissed.

The questions as to non-compliance of the mandatory provisions of the NDPS Act and the effect of complainant being investigating officer can be determined on the basis of evidence to be produced during trial and cannot be gone into at this stage as this Court is not required to judge/weigh intrinsic evidentiary value or sufficiency of the material to be translated into evidence against the petitioner. Rigors of Section 37(1)(b) of the NDPS Act are applicable to the case. There are no reasonable grounds for believing that the petitioner had not committed the offence punishable under Section 22 of the NDPS Act and that the petitioner will not commit any offence under the NDPS Act if released on bail. Delay in trial is by itself no ground for grant of bail as the trial can also be expedited. In these facts and circumstances of the case but without commenting on merits, I am of the considered view that the petitioner does not deserve the concession of regular bail and the petition deserves to be dismissed.

Accordingly, the petition is dismissed.

However, in view of the observations made by Hon'ble Supreme Court in *Doongar Singh Vs. State of Rajasthan 2018 (1) RCR Criminal 256, State of U.P. Vs. Shambhu Nath Singh and*

others, 2001 (2) R.C.R. (Criminal) 390, Hussain and another Vs. Union of India 2017(2) RCR Criminal 312 and Thana Singh Vs. Central Bureau of Narcotics 2013(1) R.C.R(Criminal) 861, the trial Court is directed to expiate the trial and record prosecution evidence preferably within a period of three months by conducting trial on day to day basis by allocating block of dates for the trial as directed by Hon'ble Supreme Court and by issuing coercive process for securing presence of the witnesses.

In case of non-appearance of official witnesses, the trial Court shall take appropriate action against the concerned police officials absenting without any lawful excuse by filing complaint under Section 174 of the Indian Penal Code, 1860 or taking proceedings under Section 350 of the Cr.P.C. against them.

However, nothing in this order shall be treated as expression of any opinion on merits of the case so as to bind or influence the trial Court in adjudication of question of guilt or innocence of the petitioner.

A copy of this order be sent to the trial Court concerned for requisite compliance.

04.03.2020

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(ARUN KUMAR TYAGI)
JUDGE

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