

213

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M No.2574 of 2021 (O&M)

Date of decision: 27.07.2021

Raj Kumar

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. K.S. Brar, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN J. (Oral)

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.128 dated 14.10.2019, for offence punishable under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') registered at Police Station City-II, Abohar, District Fazilka.

Counsel for the petitioner, at the very outset, has relied upon the order dated 09.09.2020 passed in CRM-M Nos.10078 and 8881 of 2020, vide which the co-accused of the petitioner namely Surya Parkash and Rajesh Kumar, were granted the concession of regular bail.

The operative part of the said order, reads as under:-

“Learned counsel for the petitioners submits that as per the allegations in the FIR, the police party stopped a car, which was being driven by petitioner Surya Parkash and petitioner Rajesh Kumar was sitting on the co-driver seat. In the meantime, one other co-accused, namely Raj

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Kumar, who was sitting on the rear seat, tried to run away while carrying a suitcase in his hand, however, he was apprehended by the police party and disclosed his name as 'Raj Kumar'.

Learned counsel for the petitioner further submits that in fact the petitioners had no knowledge about the articles lying in the said suitcase as on search, it was found to be carrying 9500 tablets of Tramadol Hydrochloride.

It is further submitted that in fact co-accused Raj Kumar has taken lift from the petitioners and he has given it in writing that he has taken lift and petitioners Surya Parkash and Rajesh Kumar have no role in the incident, where he was caught with 9500 intoxicant tablets.

Learned counsel further submits that even as per the version in FIR, the said suitcase was in the actual possession of co-accused Raj Kumar, who tried to run away from the spot.

Learned counsel further submits that petitioner Rajesh Kumar is suffering from paralysis and has placed on record medical certificate issued by Modern Jail, Faridkot, which is taken on record as Mark 'A'. In the medical certificate, Medical Officer of the jail hospital has reported about the health conditions of Rajesh Kumar.

Learned State counsel has filed custody certificate, as per which, the petitioners are in judicial custody for the last more than ten months. It is further submitted that charges were framed on 03.03.2020, however, till date, no prosecution witness has been examined due to Covid19 situation. A perusal of the custody certificate shows that petitioners are not involved in any other case under the NDPS Act.

After hearing learned counsel for the parties, without commenting upon the merits of the case, considering the submissions of learned counsel for the

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parties, the instant petitions are disposed. Petitioners Surya Parkash and Rajesh Kumar are ordered to be released on interim bail till 15.01.2021, on their furnishing bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate concerned.

However, the trial Court, after assessing the situation, if the trial has not started in ordinary course and the evidence is recorded, may cancel or may continue the interim bail granted to the petitioners till further orders.”

For the sake of brevity, the facts are not reproduced again.

Counsel for the petitioner has further submitted that the petitioner is in custody since 15.10.2019, he is not involved in any other case and despite a lapse of 01 year, 09 months and 11 days and only 06 PWs have been examined so far. It is also submitted that due to COVID-19 situation, the trial is delayed and the case of the petitioner is on identical footing as of the co-accused, who have been granted the concession of regular bail.

Counsel for the State on the basis of the Custody Certificate has not disputed the factual position but opposed the prayer for bail. It is further submitted that in total 9500 Tramadol tablets were recovered.

Without commenting anything on merits of the case, considering the fact that the petitioner is in custody for the last 01 year 09 months and 11 days; the co-accused of the petitioner are already released on bail; the petitioner is not involved in any other case; the custodial interrogation of the petitioner is not required and the conclusion of the trial will take some time due to COVID-19 situation, this petition is allowed and the petitioner is directed to be released on

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bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaqa Magistrate/Duty Magistrate.

However, it will be open for the prosecution to apply for cancellation of bail of the petitioner, in case he is found involved in any other case or misusing the concession of bail, in any manner.

(ARVIND SINGH SANGWAN)
JUDGE

27.07.2021

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Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No