

Sr.No.208

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

CRM-M-6014-2021

Date of decision:23.07.2021

Md. Ziauddin

... Petitioner

versus

Union of India,

... Respondent

Coram: Hon'ble Mr. Justice Arvind Singh Sangwan

Present: Mr. Charanpreet Singh, Advocate
for the petitioner.

Ms. Gurmeet Kaur Gill, Senior Panel Counsel
for NCB, UOI.

Through Video Conference

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 NCB Crime Number 22 of 2018, dated 12.05.2018, registered under Sections 8, 20 and 29 of NDPS Act, with Police Station NCB, Chandigarh.

Counsel for the petitioner has submitted that petitioner is aged about 68 years and as per the complaint filed by NCB dated 12.05.2018, in para No.9 of the complaint it is stated that after the petitioner alongwith the co-accused were apprehended, his personal search was conducted and from the lower pocket of the jacket three packets wrapped in brown tape were found. On removing the tape, capsule shaped black material found

wrapped in silver foil was recovered.

Counsel for the petitioner has submitted that as per para 10 of the complaint while testing with DD Kit it was found to be given a positive result for Charas and upon weighing the total contraband recovered was 1.210 kgs.

Counsel for the petitioner has submitted that in para 11 of the complaint it is stated that thereafter, notice under Section 50 NDPS Act was given to the accused person.

Counsel for the petitioner has argued that it will a matter of trial whether issuance of notice under Section 50 NDPS Act after conducting personal search by the same Investigation Officer is a correct procedure adopted by the Investigating Agency. Counsel for the petitioner has further submitted that recovery is marginally more than the commercial quantity i.e. 1 kg and the petitioner is in custody for the last 03 years and 02 months and he is not involved in any other case.

On 14.07.2021, considering the long custody of the petitioner, report was sought from the trial Court and report dated 15.07.2021 is received wherein it is stated that 4 prosecution witnesses have already been examined till 24.04.2020 and thereafter, when the case was adjourned, due to Covid-19 situation, no prosecution witness could not be examined. It is further stated that the special public prosecutor for NCB has requested that the remaining prosecution witnesses stand posted at different places all over India and considering fear of 3rd wave and other attending circumstances, prosecution needs sufficient time to produce remaining witnesses.

Counsel appearing for the NCB has not disputed the aforesaid situation that after 24.04.2020 no PW has been examined for a period of about 01 year and 03 months. Though, it is argued that remaining prosecution witnesses can be examined on the subsequent dates.

After hearing the counsel for the parties, without commenting anything on merits of the case, considering the fact that the petitioner is not involved in any other case; he is in long custody of more than 03 years 02 months; is an old man aged about 68 years; trial is stand still for the last more than 01 year and 03 months and NCB officials are reluctant in appearing before the Trial Court, considering fear of 3rd wave or any other attending circumstances, I deem it appropriate to release the petitioner on regular bail, 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, the petitioner will furnish one local surety to the satisfaction of the trial Court.

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.

23rd July, 2021

Shivani Kaushik

[ARVIND SINGH SANGWAN]

JUDGE

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No