

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

214/2

**CRM-M-6687-2020
Date of decision: 09.02.2021**

AVTAR SINGH

.....Petitioner

Versus

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. P.S. Sekhon, Advocate
for Mr. Dinesh Trehan, Advocate
for the petitioner.

Mr. Bhupender Beniwal, Asstt. A.G., Punjab
for the respondent-State.

ARUN KUMAR TYAGI, J (ORAL)

The petitioner has filed the present (first) petition under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail in case FIR No.262 dated 27.11.2019 registered under Sections 22, 25, 27 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act') in Police Station Sadar Jagraon, District Ludhiana.

As per the prosecution version, on 27.11.2019, at about 10 A.M., the police party headed by ASI Surjit Singh present at Matt Chowk in the area of village Galib Kalan received secret information that Vicky Singh alias Vicky and Avtar Singh (the petitioner) are habitual of selling intoxicant tablets and are coming on motorcycle PB29AB-1869 and could be apprehended if nakabandi was conducted.

Nakabandi was accordingly conducted. After sometime co-accused Vicky Singh @ Vicky and the petitioner came on motorcycle who were apprehended by the police party and 7 boxes containing intoxicant tablets totaling 1400 tablets of Tramadol Hydrochloride were recovered from a plastic bag held by co-accused Vicky Singh @ Vicky.

The petitioner being in custody since his arrest has filed the present petition for grant of regular bail.

The petition has been opposed by learned State Counsel in terms of reply filed in connected case CRM-M-21185 of 2020 which has been adopted by the learned State Counsel in the present case.

Custody Certificate dated 09.02.2021 has been filed by learned State Counsel which is taken on record.

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

Learned Counsel for the petitioner has submitted that the petitioner has been falsely implicated in the case on the basis of alleged secret information. The petitioner was only driving the motorcycle which belongs to co-accused Vicky Singh @ Vicky who was the pillion rider. Co-accused Vicky Singh @ Vicky was holding the plastic bag containing the contraband. The petitioner cannot be said to be aware of the contents of the plastic bag which was held by co-accused Vicky Singh @ Vicky and cannot be said to be in conscious possession of the contraband. No independent witness was joined by the police at the time of alleged recovery. The mandatory provisions of the NDPS Act were not complied with. Investigation is complete and challan has been filed but charge is yet to be framed and prosecution evidence is yet to

commence. The petitioner is not involved in any other case under the NDPS Act. Trial is likely to take long time due to restrictions imposed to prevent spread of infection of Covid-19. No useful purpose will be served by keeping the petitioner in custody. Therefore, the petitioner may be ordered to be released on regular bail.

On the other hand, learned State Counsel has argued that the petitioner is accused of having kept commercial quantity of the contraband in his conscious possession alongwith his co-accused and has thereby committed serious offences. The petitioner does not deserve the concession of regular bail. Therefore, the petition may be dismissed.

However, learned State Counsel has conceded that the petitioner is not involved in any other case under the NDPS Act.

Keeping in view the facts and circumstances of the case, involvement of the question as to whether the petitioner can be said to be in conscious possession of the contraband recovered from his co-accused Vicky Singh @ Vicky and the fact that he is not involved in any other case under the NDPS Act which by implication satisfies both the conditions of Section 37 (1) (b) of the NDPS Act, the period of his custody and the fact that the trial is likely to take long time but without expressing any opinion on merits of the case, I am of the considered view that the petitioner deserves the concession of regular bail.

In view of the above, the petition is allowed and the petitioner is ordered to be released on regular bail on furnishing of personal and surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

However, the petitioner is granted regular bail subject to

the condition that after his release on bail, he shall not commit any similar offence and in case of commission of similar offence by him after his release, his bail in the present case shall also be liable to be cancelled on application to be filed in this regard.

09.02.2021

kavneet singh

(ARUN KUMAR TYAGI)
JUDGE

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