

203 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-12019-2021
Date of Decision: 22.03.2021

NARESH KUMAR @ BABBU ... PETITIONER
V/S
STATE OF PUNJAB ... RESPONDENT

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

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

Mr. V.G. Jauhar, Sr. DAG, Punjab.

(The case has been taken up through video conferencing on account of Covid-19 pandemic)

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VIVEK PURI, J. (ORAL)

Petitioner has prayed for grant of regular bail in case FIR No.81 dated 10.7.2019, under Section 22 of NDPS Act, 1985, registered at Police Station Maqsudan, District Jalandhar.

Custody certificate has been placed on record.

Briefly, the FIR has been registered on the basis of the allegations that petitioner was walking on foot and on seeing the Police party, he threw the polythene bag being carried in his hand. His identity was verified and 600 capsules of Spasmo Proxyvon Plus containing Tramadol have been recovered from the bag.

It has been contended by learned counsel for the petitioner that the recovery has not been effected from the person of the petitioner, out of recovered capsules only 48 capsules have been sent for chemical examination though no batch Number has been mentioned on the strips, the petitioner is in custody since 10.7.2019 and only one out of seven witnesses have been examined so far.

Learned State counsel, on instructions from ASI Sukhvinder Singh, has not disputed the aforesaid facts but has argued that the quantity of contraband recovered from the possession of the petitioner is to the extent of 369 grams which falls in the category of commercial quantity.

Be that as it may, in the instant case, the petitioner had thrown the polythene bag from which the recovery has been effected. Significantly, only 48 capsules have been sent for chemical examination. In such circumstances, it becomes debatable as to whether the quantity of contraband alleged to have been recovered from the possession of the petitioner falls in the category of commercial or non-commercial quantity. As such, the stringent provisions of section 37 of the NDPS Act cannot be applied in the instant case. Furthermore, the petitioner is in custody for the last more than one year and eight months. The custody certificate indicates that he is not involved in any other case much less under NDPS Act. The conclusion of trial is likely to take some time and as such, the ends of justice would be met if the petitioner is extended the concession of bail. Therefore, without making any expression of opinion on the merits of the case, it is ordered that the petitioner be released on regular bail subject to his furnishing requisite bail bonds/surety bonds to the satisfaction of the concerned trial Court/Chief Judicial Magistrate/Duty Magistrate.

The petition is allowed.

22.03.2021

Janki

**(VIVEK PURI)
JUDGE**

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