

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

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**CRM-30746-2021 in
CRM-M-12647-2021.
Date of Decision: 05.10.2021.**

Deepak Kumar @ Lucky

....Applicant/Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE LALIT BATRA

Present: Mr. Sidhant Mehra, Advocate for applicant/petitioner.

Mr. Mehardeep Singh, Additional Advocate General, Punjab.

Lalit Batra, J.(Oral)

CRM-30746-2021

This application under Section 482 Cr.P.C. is for preponement of date of hearing of the main petition, which is already fixed for 09.11.2021.

Notice of application.

At the asking of Court, learned State counsel accepts notice and stated that he has no objection if application is allowed.

In view of the grounds mentioned in the application and no objection by learned State counsel, hearing of the main petition is preponed and the same is taken on Board today itself.

CRM is allowed.

Main Case

This petition under Section 439 Cr.P.C for grant of regular bail has been moved by petitioner-**Deepak Kumar @ Lucky** in case FIR No.46 dated 25.11.2020 under Section 20 of NDPS Act, registered at Police

Reply dated 24.08.2021 by way of affidavit of Surendra Lamba, IPS, Senior Superintendent of Police, Pathankot, District Pathankot alongwith Annexure R-1, already filed on behalf of respondent-State, is taken on record.

Learned counsel for the petitioner *inter alia* contends that the allegations levelled in the FIR are totally concocted, false and frivolous and there is no iota of truth therein. He further urges that allegedly vehicle in question (Car make Maruti) bearing registration No.CH-03W-2064 was being driven by petitioner and since alleged recovery of contraband (*Charas*) was effected from underneath the driver seat of said Car, it is a matter of trial whether petitioner was in conscious possession of the said contraband or not. He further urges that neither any independent witness was joined during the course of alleged recovery nor requisite notice as envisaged under Section 50 of NDPS Act was served upon the petitioner, whereas his signatures were obtained by the police on blank papers. He further submits that even otherwise search of petitioner was not conducted in the presence of any Gazetted Officer. Learned counsel while relying on recovery memo dated 25.11.2020 (Annexure R/2) prepared by Assistant Sub Inspector Jagdish Singh (Investigating Officer), submits that a bare perusal of said memo it transpires that contraband was weighed alongwith plastic bag on the weighing scale and the total weight thereof came to 1 Kilogram and 5 grams. He further urges that the since alleged contraband was weighed with the plastic bag and the weight of said plastic bag may vary from 5 grams to 10 grams, in that eventuality actual weight of contraband shown to be 1 Kilogram and 5 grams may differ and as such alleged

commercial quantity”. He further submits that in respect of *Charas*, it has been specifically mentioned at Sr. No.23 of the Table as per sub-clause vii (a) and xxiii(a) of Section 2 of the NDPS Act that “commercial quantity” would start in respect of said contraband weighing more than 1 Kilogram. He further urges that in view of above, once the exact weight of contraband is not forthcoming on the record, benefit qua that fact may be granted to the petitioner. He further submits that there was delay of nine days in sending sample to the Forensic Science Laboratory. He further urges that petitioner is languishing in custody since 25.11.2020 and he is no more required by the Police for any investigation purpose as after completion of investigation, final report under Section 173 Cr.P.C. (*Challan*) has already been presented in the Court and since trial of the case would take sufficient time to conclude, no useful purpose would be served by keeping the petitioner in custody further and he may be released on bail.

On the other hand, learned State counsel while opposing instant petition has vehemently argued that keeping in view seriousness of offence, petitioner does not deserve the concession of bail.

I have heard learned counsel for the parties and have carefully gone through the record of the case.

At this stage, without commenting anything on the merits of the case lest it may prejudice the outcome of the trial but taking into consideration the fact that petitioner is languishing in custody since 25.11.2020; that petitioner is no more required by the Investigating Agency for investigation purpose as after completion of investigation, final report under Section 173 Cr.P.C. (*Challan*) has already been presented in the

useful purpose would be served by detaining the petitioner in custody further, thus, he deserves the concession of bail.

In view of above, instant petition for grant of regular bail moved by petitioner-**Deepak Kumar @ Lucky** is allowed and he is ordered to be released on bail on his furnishing personal/surety bonds to the satisfaction of Trial Court/ Chief Judicial Magistrate/Duty Magistrate, Pathankot, as the case may be.

(LALIT BATRA)
JUDGE

05.10.2021
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Whether speaking/reasoned : Yes/ No

Whether reportable : Yes/ No