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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M No.15902 of 2021 (O&M)

Date of decision: 12.07.2021

Varinder Singh

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

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

Mr. M.S. Nagra, AAG, Punjab.

ARVIND SINGH SANGWAN J. (Oral)

CRM-16441-2021

Prayer in this application is for preponing the date fixed in the main petition.

Heard.

For the reasons stated in the application, the same is allowed and the main case is taken up today for hearing.

CRM-M-15902-2021

Prayer in this 4th 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.160 dated 04.08.2019, for offence punishable under Sections 15/61/85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') (Section 29 of the NDPS Act added later) registered at Police Station City Mandi Gobindgarh, District Fatehgarh Sahib.

Counsel for the petitioner has submitted that as per the allegations in the FIR, registered at the instance of the complainant/Inspector Hemant Kumar, it is stated that he while on patrol duty along with his co-officials stopped a car bearing registration

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No.PB26-T-1653 on suspicion. On enquiry, the driver of the car disclosed his name as Varinder Singh @ Goldy i.e. the petitioner, and he was given a notice under Section 50 of the NDPS Act that since the Investigating Officer has a suspicion of some narcotic substance in the car, he wanted to carry on the search and therefore, the petitioner can give an option to be searched before a Gazetted Officer or a Magistrate. When the petitioner opted for search before a Gazetted Officer, the Deputy Superintendent of Police was called at the spot and thereafter, in the presence of the Deputy Superintendent of Police was conducted and 02 bags of poppy husk carrying 25 Kgs and 27 Kgs, each were effected.

Counsel for the petitioner has further submitted that the ruqa was sent to the Police Station after the entire search procedure was completed i.e. after giving a notice under Section 50 of the NDPS Act, the Deputy Superintendent of Police came at the spot and after effecting the search and recovery, the information was sent to the Police Station and therefore, the Investigating Officer conducted the entire procedure without following the procedure under Section 42 of the NDPS Act.

Counsel for the petitioner has also argued that there are other moot points involved in the case to be decided during the course of trial regarding the manner in which the investigation has been conducted. It is also submitted that while checking the weight of the poppy husk, it included the weight of the plastic bag and therefore, the recovery was marginally higher than the commercial quantity.

Counsel for the petitioner further argued that the petitioner is the first offender and is not involved in any other case under the

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NDPS Act and he was arrested on 07.08.2019 and as on today, he is in custody for more than 01 year and 06 months. Lastly, it is submitted that the trial has substantially delay due to COVID-19 situation as out of 22 PWs only 01 PW has been examined so far.

Counsel for the State on the basis of the Custody Certificate dated 26.04.2021 has not disputed the factual position but opposed the prayer for bail.

Without commenting anything on merits of the case, considering the fact that the petitioner is in custody for the last more than 01 year and 06 months; the petitioner is not involved in any other case under the NDPS Act; the custodial interrogation of the petitioner is not required; the conclusion of the trial will take some time due to COVID-19 situation and considering the rigor of Section 37 of the NDPS Act, I deem it appropriate to grant the concession of regular bail to the petitioner. Accordingly, the present 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, 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**

12.07.2021

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Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No