

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

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**CRM-M-16150-2021
Date of decision: 19.07.2021**

Balwinder Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Surmeet S. Sandhu, Advocate
for the petitioner.

Mr. P.S. Walia, Asstt. AG, Punjab
for the respondent-State.

ARUN KUMAR TYAGI, J (ORAL)

(The case has been taken up for hearing through video conferencing.)

The petitioner has filed the present (second) petition under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail in case FIR No.65 dated 04.03.2019 registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act') at Police Station Phillaur, District Jalandhar.

First petition filed by the petitioner for grant of regular bail was dismissed as withdrawn by this Court vide order dated 03.09.2020 passed in CRM-M-7617-2020.

Briefly stated, case of the prosecution against the petitioner is that on 04.03.2019 police party headed by ASI Ravinder Singh on patrolling duty were coming to Tehang Octroi via Saiflabad. When they reached near Civil Hospital, Phillour they saw the petitioner coming on

foot who on seeing the police party threw one heavy weight black coloured polythene bag and tried to run away. The police apprehended the petitioner and on search as per prescribed procedure recovered 55 intoxicant injections containing Buprenorphine 2 ml each and 55 injections containing Avil 10 ml each from the polythene bag.

The petitioner being in custody since 04.03.2019 has filed the present petition for grant of regular bail.

The petition has been opposed by learned State Counsel in terms of reply filed by way of affidavit of Sh. Suhail Mir, IPS, Superintendent of Police, Sub Division Phillaur, District Jalandhar (Rural) in the Registry which is taken on record.

Custody certificate has been filed by learned State Counsel through e-mail print out of 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 argued that the petitioner has been falsely implicated in the case. Recovery was allegedly made from polythene bag thrown on the road side. The petitioner cannot be said to be in conscious possession of the contraband allegedly recovered from the polythene bag lying on the road side. Mandatory provisions of the NDPS Act were not complied with. The petitioner is not involved in any other case under the NDPS Act. Rigors of Section 37(1)(b) of the NDPS are not applicable qua the petitioner. The prosecution evidence is yet to be recorded. Trial is likely to take long time and no useful purpose will be served by his further

detention in custody. Therefore, the petitioner may be ordered to be released on bail.

On the other hand, learned State Counsel has argued that the petitioner kept in his conscious possession commercial quantity of intoxicant injections. Rigors of Section 37(1)(b) are fully applicable to the case of the petitioner. 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.

In *CRM-M-13662-2020 titled as 'Niranjan Kumar @ Kaka Vs. State of Punjab' decided on 06.07.2020; CRM-M-14474-2020 titled as 'Dharminder Singh Vs. State of Punjab' decided on 24.06.2020; CRM-M-21020-2020 titled as 'Amritpal Singh Lamberdar Vs. State of Punjab' decided on 11.08.2020; CRM-M-6433-2018 titled as 'Pawan Kumar Vs. State of Punjab' decided on 23.02.2018 and CRM-M-16380-2020 titled as 'Buta Singh Vs. State of Punjab' decided on 13.08.2020* where recovery of narcotic/psychotropic drug/substance was made from bag allegedly thrown on the road side by the accused, the case was considered to involve question as to whether the accused could be said to be in conscious possession thereof and the accused was granted regular bail.

In *'Chitta Biswas @ Subhash Vs. State of West Bengal' Criminal Appeal No.245 of 2020 SLP (Criminal) No.8823 of 2019 decided on 07.02.2020* where recovery of 46 bottles of phensydryl cough syrup containing codeine mixture above commercial quantity

was made from the accused who was in custody since 21.07.2018 and out of 10 prosecution witnesses only 4 prosecution witnesses had been examined, the accused was granted bail by Hon'ble Supreme Court.

In the present case recovery of intoxicant injections was allegedly made from polythene bag allegedly thrown on the road side. The case involves debatable question as to whether the petitioner can be said to be in conscious possession of the contraband recovered from the polythene bag lying on the road side. The petitioner is not involved in any other case under the NDPS Act. Rigors of Section 37(1)(b) of the NDPS Act stand satisfied by due implication. Further, the petitioner is in custody since 04.03.2019. Prosecution evidence is yet to be recorded. The trial is likely to take long time due to restrictions imposed to prevent spread of Covid-19.

In view of the above referred judicial precedents and facts and circumstances of the case but without commenting on the merits of the case, I am of the considered view that the petitioner deserves the concession of regular bail.

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

However, bail is granted to the petitioner subject to the condition that he will not commit any offence under the NDPS Act after his release on bail and in case of involvement of the petitioner in commission of any offence under the NDPS Act in future, his bail in

the present case shall also be liable to be cancelled on application to be filed in this regard.

19.07.2021

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(ARUN KUMAR TYAGI)
JUDGE

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