

CRM-M-16405-2021

Date of Decision: 27.05.2021.

Arvind

...Petitioner

vs.

State of Haryana

...Respondent

Coram : Hon'ble Mr. Justice B.S. Walia.

Present: Mr. R.K. Gupta, Advocate for the petitioner.

Mr. Krishan K. Chahal, Addl. AG, Haryana.

B.S. Walia, J. (VC)

1. Case is being taken up for hearing through Video Conferencing due to Covid-19 pandemic.

2. Prayer in the petition under Section 439 Cr.P.C. is for grant of regular bail to the petitioner in case FIR No.41 dated 22.01.2021, registered under Sections 21 and 25, NDPS Act, 1985, at Police Station Kundli, District Sonipat.

3. Learned counsel contends that as per the FIR, 20 grams of heroin was recovered from the petitioner, 803 grams of heroin from co-accused Vikas, 523 grams of heroin from co-accused Sunil while 394 grams of heroin was recovered from co-accused Mukdari.e. total 1740 grams of heroin on apprehension of the accused at a Naka while they were going in a car.

4. Learned counsel contends that commercial quantity of heroin is 250 grams, whereas the heroin recovered from the petitioner is merely 20 grams which is intermeditary quantity and in view thereof, the petitioner is entitled to be released on bail especially in view of the fact that he has been in custody since 22.01.2021, challan has been filed,

though charges are yet to be framed, consequentially trial will take considerable time. Learned counsel further contends that there is no other case registered against the petitioner. Reliance is placed on the decision of Hon'ble the Supreme Court in Amar Singh Ramjibhai Barot vs. State of Gujarat 2005 (7) SCC 550, to contend that where more one than one accused going together is found carrying contraband, the quantity of contraband carried by both the accused cannot be added, to bring it within the ambit of commercial quantity, thereof, the total quantity of heroin recovered from the petitioner is only 20 grams, which is much lesser than the commercial quantity and is only intermeditary quantity as per the Schedule to the NDPS Act, 1985.

5. Learned Addl. AG, Haryana, on instructions from ASI, Devinder Kumar, concedes that in view of the decision of Hon'ble the Supreme Court in Amar Singh's case (supra), recovery of 20 grams of heroin from the petitioner cannot be added to the recovery from other co accused so as to treat even the recovery of 20 grams as commercial quantity as the total quantity recovered from the petitioner i.e. 20 grams of heroin is much less than the commercial quantity i.e. 250 grams. Learned Addl. AG, Haryana, further confirms that the petitioner has been in custody since 22.01.2021, and that although challan has been presented in the case, charges are yet to be framed.

6. I have considered the submissions of learned counsel for the parties and in the light of the position noted above, especially of there being recovery of only 20 grams of heroin from the petitioner and of the same not being clubbable with recovery from other co accused so as

to work out commercial quantity in view of the decision of Hon'ble the Supreme Court in Amar Singh's case (supra), besides, investigation being complete, challan having been presented, though charges are yet to be framed, resultantly, trial would take considerable period of time due to circumstances prevailing on account of Corona Virus Pandemic, I am of the view that no useful purpose would be served by keeping the petitioner behind bars. Accordingly, the petition for regular bail is allowed and the petitioner is ordered to be released on regular bail during the pendency of the trial, subject to his furnishing bail/surety bonds to the satisfaction of the learned CJM/Trial Court/Duty Magistrate, concerned, provided he is not required in any other case. The petitioner shall also abide by the conditions contained in Section 437(3) Cr.P.C.

7. However, nothing stated hereinabove shall be taken as an expression of opinion on the merits of the case.

(B.S. Walia)
Judge

27.05.2021.

'Rajesh'

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