

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

214

**CRM-M-20162-2021
Date of decision: 04.08.2021**

Sher ChandPetitioner

Versus

State of PunjabRespondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Dilraj Singh Bhinder, Advocate
for the petitioner.

Mr. Sidakmeet Singh Sandhu, 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 petition under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail in case FIR No.52 dated 25.02.2021 registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act') at Police Station City Jalalabad, District Fazilka.

Briefly stated, case of the prosecution against the petitioner is that on 25.02.2021 police party headed by ASI Des Singh was on patrolling duty. When the police party reached near Sonia Petrol Pump, City Jalalabad they saw the petitioner, holding one black plastic bag in his hand, standing on south end of the Petrol Pump. On seeing the polity party he tried to run away after throwing the polythene bag towards the wall of the petrol pump. The police apprehended him and on search as per prescribed procedure 360 intoxicating tablets

containing Tramadol Hydrochloride were recovered from the polythene bag.

The petitioner being in custody since 25.02.2021 has filed the present petition for grant of regular bail.

The petition has been opposed by learned State Counsel. However, no reply has been filed by the respondent-State.

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 towards the wall of the petrol pump. The prosecution version that the polythene bag belonged to the petitioner is highly doubtful. The petitioner cannot be said to be in conscious possession of the intoxicant tablets allegedly recovered from the polythene bag lying near the wall of the petrol pump. Mandatory provisions of the NDPS Act were not complied with. The contraband allegedly recovered falls in the category of non-commercial quantity and rigors of Section 37(1)(b) of the NDPS are not applicable. The petitioner has been falsely implicated in two other cases under the NDPS Act but he is on bail in both the cases. 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 is habitual offender. The petitioner kept in his conscious possession intoxicant tablets containing Tramadol Hydrochloride. The petitioner does not deserve the concession of regular bail. Therefore, the petition may be dismissed.

However, learned State Counsel has submitted that the contraband allegedly recovered does not fall in the category of commercial quantity and rigors of Section 37(1)(b) of the NDPS Act are not applicable.

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 the present case recovery of 360 tablets was allegedly made from polythene bag allegedly lying near wall of the petrol pump which is alleged to have thrown by the petitioner. The case involves debatable question as to whether the petitioner can be said to be in conscious possession thereof. The contraband allegedly recovered falls

in the category of non-commercial quantity. The petitioner is involved in two other cases under the NDPS Act but he is on bail in both the cases. 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.

04.08.2021

kothiyal

(ARUN KUMAR TYAGI)
JUDGE

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