

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

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CRM-M-20339-2021
Date of decision: 19.07.2021

Varinder Kumar @ Sharma

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. J.K. Singla, 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 (first) petition under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail in case FIR No.189 dated 05.11.2020 registered under Sections 22, 25 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act') at Police Station City-2, Mansa.

Briefly stated, case of the prosecution against the petitioner is that on 05.11.2020 the police party headed by ASI Ujagar Singh was patrolling in the area of City Mansa. When the vehicle of the police party turned from Deena Nath Tyres Street towards Rajinder Parshad Sharma Advocate Street, they saw motorcycle driven by the petitioner. On seeking the police party the petitioner tried to turn back his motorcycle to run away but his motorcycle slipped and fell on the ground. One transparent polythene bag which the petitioner had kept between his legs also fell down. On search as per prescribed procedure 1680 intoxicant tablets were recovered from the polythene bag lying on the road side.

The petitioner being in custody since 05.11.2020 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 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 tablets. 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 tablets was allegedly made from polythene bag allegedly lying 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 05.11.2020. 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