

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

**CRM-M-20831-2021
Date of decision: 03.09.2021**

Sandeep Kumar

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Rohit Mittal, Advocate
for the petitioner.

Mr. Anmol Malik, AAG, Haryana.

(Through video conferencing)

ARVIND SINGH SANGWAN, J. (Oral)

This petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No. 22 dated 24.01.2021, registered under Section 20 of the Narcotic Drugs & Psychotropic Substances Act, 1985 at Police Station Nangal Choudhary, District Mahendergarh.

Learned counsel for the petitioner, at the very outset, relies upon order dated 03.08.2021, vide which co-accused Anil and Hans Raj have been granted concession of regular bail by this Court. The operative part of the order reads as under:

“Learned counsel, appearing for petitioner Anil, submits that as per allegations in the FIR, the police party, headed by ASI Ashok Yadav, while on patrol duty, received a secret information that one pick up vehicle bearing registration number RJ-32-GB-1213, driven by co-accused Sandeep, is coming from Rajasthan side and

is carrying narcotic substances (Ganja). On receiving this information, a barricade was put up and co-accused Sandeep was apprehended; he was given a notice under Section 50 of the NDPS Act and it is only thereafter, a notice under Section 42 of the NDPS Act was prepared. Thereafter, 25.7 Kgs. of Ganja were recovered from him.

Learned counsel further submits that petitioner Anil was nominated on the disclosure of the aforesaid co-accused and even the recovery effected from the co-accused was not made in accordance with settled procedure of law.

Learned counsel further submits that petitioner was in fact arrested in one another FIR in Rajasthan, i.e. FIR No. 31 PS-Paniyala, Jaipur, however, he is on bail in the said case and on production warrant, he was nominated in the present FIR and nothing was recovered from him in the present case.

Learned counsel, appearing for petitioner Hans Raj, submits that petitioner Hans Raj is also on the same footing with petitioner Anil as he was also nominated on the disclosure statement of co-accused Sandeep and no recovery was effected from him.

Learned counsel further submits that petitioner was also arrested in FIR No. 31 PS-Paniyala, Jaipur, however, he is also on bail in the said case and on production warrant, he was nominated in the present FIR.

Learned State counsel, on the basis of the custody certificates, has not disputed the factual position that petitioners were taken on production warrant from Rajasthan police and nothing was recovered from them after they were arrested in the present case.

After hearing learned counsel for the parties,

considering the facts and circumstances of the case and also in view of the fact that petitioners are in judicial custody for the last about five months; investigation qua them is complete and also in view of the fact that after the arrest of the aforesaid co-accused, no proceedings were initiated under Section 42 of the NDPS Act and even *ruqa* was not sent and such proceedings were initiated only after the arrest of the said co-accused, after giving him notice under Section 50 of the NDPS Act, this Court finds that it will be a matter of trial whether a proper procedure was followed or not.

Accordingly, both the present petitions are allowed. Petitioners Anil and Hans Raj are ordered to be released on regular bail, subject to their furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned.”

For the sake of brevity, the facts are not reproduced here again.

Learned counsel for the petitioner further submits that petitioner is in judicial custody since 28.01.2021.

Reply, filed by way of affidavit of the Investigating Officer, is on record. As per reply, the police party received a secret information that a pick up vehicle bearing registration number RJ-32-GB-1213, driven by petitioner Sandeep Kumar is coming carrying some narcotic substance. On this, a raiding party was constituted and petitioner was apprehended and by the following the procedure, recovery of 25.7 Kgs. of *Ganja* was effected.

Learned counsel for the petitioner further submits that petitioner is not involved in any other case; investigation qua petitioner is complete; as per FSL report and the contraband recovered has been identified as *Ganja*.

Learned State counsel, on the basis of the reply, has not

disputed the factual position but opposed the bail.

I have heard learned counsel for the parties.

Without commenting upon the merits of the case, considering the fact that the petitioner is in judicial custody since 28.01.2021; his co-accused have already been granted concession of regular bail as noticed above and also in view of the fact that it has been noticed by this Court in the order reproduced above that it will be a matter of trial whether provisions of Section 42 of the NDPS Act were complied with or not, the instant petition is allowed. The petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate/Illaqa Magistrate, concerned.

03.09.2021

Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No