

CRM-M-24060-2021

Date of Decision: 14.07.2021

KULDEEP RAM @ MINTU

... PETITIONER

VS.

STATE OF PUNJAB

.. RESPONDENT

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present : Mr. D.K.Bhatti, Advocate
for the petitioner.

Mr. Venu Gopal Jauhar, Sr. Deputy Advocate General, Punjab.

VIVEK PURI, J.(ORAL)

The matter has been taken up through video-conferencing due to COVID-19 pandemic.

Custody certificate of the petitioner and supplementary reply by way of affidavit of Suhail Mir, Superintendent of Police, Sub-Division Phillaur, District Jalandhar (Rural) have been placed on record.

Through instant petition, the petitioner is seeking regular bail in case bearing FIR No.394 dated 27.11.2019 registered under Section 22 of the Narcotics Drugs and Psychotropic Substances Act (for short the 'NDPS Act') at Police Station Phillaur, District Jalandhar.

Briefly, the aforesaid FIR has been registered on the allegations that on 27.11.2019, the petitioner was apprehended and 90 injections of 'LEEGESIC' and 'AVIL', each were recovered from the plastic bag, which was thrown by the petitioner in the bushes.

It has been stated that Buprenorphine was found in the contents of 90 injections and avil does not fall within the parameters of the NDPS Act.

On 06.07.2021, reply by way of affidavit of Suhail Mir, Superintendent of Police, Sub-Division Phillaur, District Jalandhar (Rural) was submitted and learned State counsel had sought short adjournment to verify if

anyone had seen the petitioner throwing the bag containing the contraband in the bushes.

Today, another short reply by way of affidavit of Suhail Mir, Superintendent of Police, Sub-Division Phillaur, District Jalandhar (Rural) has been placed on record and it has been specifically and categorically mentioned in para No.4 of the reply dated 08.07.2021 that there is nothing on record which suggests that anyone had seen the petitioner whilst throwing the bag containing intoxicant injections in the bushes alongside the road on the occurrence dated 27.11.2019.

In the subsequent portion of the aforesaid reply, it has also been mentioned that statements of two police officials, namely, ASI Gurdish Ram and PHG Sarabjit Singh have been got recorded who have stated that they had seen the petitioner throwing the bag in the bushes on the occurrence dated 27.11.2019. Copies of the statements have been attached and the same have been recorded on 07.07.2021.

It is significant to note that the exercise of recording of the statements of ASI Gurdish Ram and PHG Sarabjit Singh has been carried out subsequently during the pendency of the petition after a query was raised as to whether anyone had seen the petitioner throwing the bag containing contraband in the bushes.

It has been strongly pointed out by the learned counsel for the petitioner that after the investigation of the case, the challan has been presented on 22.05.2020 and the recording of the statements of the aforesaid two witnesses is a result of afterthought.

Learned State counsel has opposed the bail application on the score the quantity of contraband recovered from the possession of the petitioner falls in the category of commercial quantity and stringent provisions of Section 37 of the NDPS Act come into play.

It is significant to note that as per the initial version, there was nothing to suggest that anyone had seen the petitioner throwing the bag containing contraband in the bushes. The exercise of recording the statements of aforesaid two witnesses has been done subsequently after the presentation of the challan and that too during the pendency of the petition after a query was raised by the Court. In such circumstances, it becomes debatable as to whether the bag from which the contraband was recovered was actually thrown by the petitioner and he could be termed to be in conscious possession thereof. Consequently, the rigors of Section 37 of the NDPS Act can be relaxed in this case. Moreover, the petitioner has already undergone the custody of 01 year 07 months and 14 days. The custody certificate indicates that he is involved in another case bearing FIR No. 48 dated 10.05.2011 under Sections 323/452/427/34 IPC, Police Station Mahilpur, District Hoshiarpur, but he is stated to be on bail. Significantly, there is nothing to suggest that the petitioner is involved in any other case under the NDPS Act.

In such circumstances, sufficient grounds are made out to extend the concession of bail to the petitioner. Accordingly, the present petition is allowed and petitioner is ordered to be released on bail, subject to his furnishing bail/surety bonds to the satisfaction of concerned Chief Judicial Magistrate/Illaq Magistrate/Duty Magistrate/trial Court.

The aforesaid observations have been circumscribed only for the purpose of disposal of the present bail application and the same shall not be construed as an expression on the merits of the case.

14.07.2021
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(VIVEK PURI)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether Reportable	: Yes/No