

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-25726-2021

Date of decision: 23.08.2021

Pankaj Kanojia

...Petitioner(s)

Versus

State of Punjab

...Respondent(s)

CORAM: - HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Arjunveer Sharma, Advocate, for the petitioner.

Mr. Randhir Singh Thind, DAG, Punjab.

JASGURPREET SINGH PURI, J.(Oral)

Short reply by way of affidavit has been filed by the Deputy Superintendent of Police, STF Unit, Ludhiana, which is taken on record.

The present petition has been filed under Section 439 of Criminal Procedure Code, for grant of regular bail in FIR No.05 dated 04.01.2021 under Sections 21, 22, 29 of Narcotic Drugs & Psychotropic Substances Act, 1985, registered at Police Station STF, Phase-4, Mohali, District SAS Nagar.

Learned counsel for the petitioner has submitted that the petitioner is in custody since 04.01.2021 and the investigation of the case is already complete and after the presentation of challan, charges have also been framed. He submitted that he was falsely implicated in the present case and the present FIR was planted upon him by the police. He submitted

that it is a case where there is total violation of Section 42 of the NDPS Act. He submitted that as per the FIR the time of alleged incident is stated to be between 5:30 P.M. to 6:00 P.M. and it was starting of January around sunset and no zimni was recorded by the police and no reasons were given while searching the vehicle which is included as a conveyance under Section 42 of the NDPS Act. He further submitted that the petitioner is not involved in any other case.

On dated 12.07.2021 learned State counsel had sought time to seek instructions with regard to assertions made by the petitioner with regard to the compliance of Section 42 of the NDPS Act. An affidavit has been filed by the State and para No.12 of the affidavit is reproduced as under:-

“12. That no zimni has been recorded by the Investigating Officer regarding the compliance of section-42 NDPS Act. The petitioner and other accused were arrested at 6:15 pm on 04.01.2021.”

Learned counsel for the petitioner has submitted that in the affidavit filed by the State it has been stated that the petitioner and the co-accused were arrested at 06:15 P.M. on 04.01.2021 and no zimni has been recorded by the Investigating Officer. He submitted that there is a clear cut violation of Section 42 of the NDPS Act and, therefore, the entire case against the petitioner has vitiated as the provisions of Section 42 are mandatory in nature. He relied upon a judgment of Hon’ble Supreme Court in ‘**Boota Singh and Others Vs. State of Haryana**’[2021 (2) RCR (Crl.) **892**] to substantiate his arguments. He submitted that even if the alleged

recovery was commercial in nature, the bar contained under Section 37 of the NDPS Act will not apply in the present case in view of the fact that the entire case against the petitioner has vitiated because of non-compliance of Section 42 of the NDPS Act.

Mr. Randhir Singh Thind, learned Deputy Advocate General, Punjab has submitted that so far as the custody period of the petitioner is concerned, it is not in dispute and it is also not disputed that the investigation of the case is already complete and after the presentation of challan, charges have been framed by the learned trial Court and also there is no other case against the petitioner. So far as the non-compliance of Section 42 of the NDPS Act is concerned, the learned State counsel has referred to para No.12 of the aforesaid affidavit.

I have heard the learned counsel for the parties.

The investigation of the case is already complete and the charges have been framed but the case of the petitioner for grant of regular bail has to be considered in the light of Section 37 of the NDPS Act since the alleged recovered quantity was commercial in nature, which was 353 grams of Heroin which was allegedly recovered from the tool box of the motorcycle. In the affidavit filed by State it has been specifically stated that the petitioner was arrested at 6:15 P.M and it was first week of January which is obviously after sun set and it is admitted by the State that no zimni has been recorded and no reasons have been recorded in compliance of the proviso of Section 42 of the NDPS Act. Therefore, at this Stage this Court is satisfied that there are reasons to believe that the petitioner is not guilty in view of the violation of Section 42 of the NDPS Act. So far as the second

ingredient as to whether there is any possibility of the petitioner fleeing from justice and tampering with evidence is concerned, it is not the case of the State that in case the petitioner is released on bail then he may flee from justice or may influence any witness. Mechanical and evasive objection has been taken in this regard in para No.13 of the affidavit. However, the learned State counsel has not been able to explain as to whether there is any real ground in existence to arrive at such an apprehension nor has he been able to justify the same. Therefore, it is a fit case where departure can be made from the bar contained under Section 37 of the NDPS Act.

Therefore, without commenting on the merit of the case and considering the totality of circumstance, the present petition is allowed. The petitioner shall be released on regular bail subject to furnishing bail bonds/surety to the satisfaction of the learned trial Court/Duty Magistrate concerned.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant for the purpose of deciding the present petition only.

(JASGURPREET SINGH PURI)
JUDGE

23.08.2021
rakesh

whether speaking : Yes/no
whether reportable : Yes/no