

221 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-25462-2021
Date of decision: 13.07.2021

VIRBHAN @ BHANNA Petitioner

Versus

STATE OF HARYANA Respondent

Coram: Hon'ble Mr. Justice B.S. Walia.

Present : Mr. Parminder Singh, Advocate for the petitioner.

Mr. Pawan Kumar Longia, DAG, Haryana.

B.S. Walia, J. (Oral)

1. Case is being taken up for hearing through Video Conferencing due to Covid-19 pandemic.

2. Prayer in the petition under Section 439 Cr.P.C. is for grant of regular bail in case FIR No.121, dated 14.04.2021, under Section 15, NDPS Act, 1985, registered at Police Station Nissing, District Karnal.

3. Learned counsel contends that 2 kg *choora post* was recovered from the petitioner on his arrest on 14.04.2021, the petitioner is in custody since said date, the petitioner has medical ailments as is evident from medical record Annexure P/2 which indicates that he is suffering from medical condition of the Gall Bladder and Kidney, that the recovery of choora post is of non-commercial quantity, investigation is complete,

challan has been presented but charges are yet to be framed, therefore, no useful purpose would be served by keeping the petitioner behind bars as the trial is likely to take considerable period of time to conclude.

4. Per contra, learned State counsel contends that the petitioner is a habitual offender as six cases under the NDPS Act were registered against him. Details of the same are reproduced as under:-

- “1. *FIR No.27/2002 under section 15 NDPS Act, P.S. Nissing, in which recovery of 3 Kgs Chooria Post was recovered, petitioner was acquitted on 05.11.2004 by the court of Sh. Darshan Singh, learned ASJ, Karnal.*
2. *FIR No.259/2003 under section 15 NDPS Act, P.S. Nissing, in which 4 Kgs Chooria Post was recovered, petitioner was convicted on 31.03.2005 and sentenced to undergo imprisonment for the period of three months and to pay fine of Rs.2500/-.*
3. *FIR No.68/2007 under section 15 NDPS Act, P.S. Nissing, in which 8 Kgs Chooria Post was recovered, petitioner was convicted and sentenced to undergo imprisonment for the period of one year four months and to pay fine of Rs.10000/-.*
4. *FIR No.310 dated 25.06.2016 under section 15 NDPS Act, P.S. Nissing, in which 900 Grams Chooria Post was recovered, petitioner was acquitted on 14.10.2019 by the court of Sh. Harleen Pal Singh, learned JMJC, Karnal.*
5. *FIR No.254 dated 14.08.2017, under section 15 NDPS Act, P.S. Nissing, in which 508 grams Chooria Post was recovered, pending trial.*
6. *FIR No.45 dated 20.02.2017, under section 15 NDPS Act, P.S. Nissing, in which 890 grams Chooria Post was recovered, pending trial.”*

5. Learned DAG contends that in the circumstances, the petitioner is not entitled for grant of bail.

6. Learned counsel for the petitioner on the other hand contends that out of the aforementioned six cases the petitioner has been acquitted in cases at Serial No.1 and 4 in the year 2004 and 2019 respectively while in cases at Serial Nos. 2 and 3, the petitioner was sentenced to imprisonment of three months for recovery of 4kgs of *choora post* in the year 2003 and for one year four month in the year 2007 for recovery of 8kgs of *choora post* and that the petitioner has already undergone imprisonment in the aforementioned cases and at present two cases i.e. at Serial Nos.5 and 6 remain which were for recovery of 508gms. of *choora post* and 890 gms. of *choora post* in the year 2017 and that the total recovery in all six cases was 17 kgs 300 gms which is again non-commercial quantity.

7. Learned counsel for the petitioner relies on the decision in “*Nirmal Kaur @ Nimo Vs. State of Punjab*”, CRM-M-20528 of 2021 decided on 08.07.2021, wherein, the petitioner from whom recovery of 10 gram of Heroin was made and who was facing two other cases under the NDPS Act and one under IPC and in whose case challan had not been filed, was released on bail on account of recovery being non-commercial quantity, besides recovery even in the other two connected cases recovery being of non-commercial quantity.

8. I have considered the submissions of learned counsel for the parties.

9. Admittedly, recovery from the petitioner is only of 2 kgs of *choora post* i.e. non-commercial quantity and out of the six cases referred

to above, the petitioner has been acquitted in two cases while in two cases he has already undergone the sentence and in the remaining two cases he is on bail pending trial in the matter pertaining to recovery of 508 gms. and 890 gms. of *choora post* in the year 2017, investigation is complete, challan has been presented though charges are yet to be framed. Although, taking into account, the past record of the petitioner I find substance in the arguments of learned State counsel that the petitioner is a habitual offender yet on account of the position noted above particularly of the petitioner suffering from Gall Bladder and Kidney problem and the conditions prevailing on account of Corona Virus Pandemic as also the apprehension of the petitioner of being susceptible to Corona Virus on account of having co-morbidities, besides investigation being complete, challan having been presented though charges are yet to be framed and trial is likely to take considerable period of time, I am of the view that the petitioner be released on regular bail during the pendency of the trial subject to his furnishing bail bonds and surety bonds to the satisfaction of the learned trial Court/Chief Judicial Magistrate/Ilaqa Magistrate with the condition that in case the petitioner is involved in any case under the Narcotic Drugs and Psychotropic Substances Act irrespective of the quantity during the period he is on bail in the instant case, the prosecution would be at liberty to move an application for cancellation of bail granted to the petitioner in the instant case. This order of regular bail is further subject to the condition that the petitioner is not required in any other case. However, nothing stated hereinabove shall be construed as an expression of opinion on the merits of the case.

10. Accordingly, the petition is allowed in the aforementioned terms.

(B.S. Walia)
Judge

July 13, 2021
'AY'

- 1. Whether speaking/reasoned: Yes/No.
- 2. Whether reportable : Yes/No.