

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

113+216

**CRM-36039-2021 in/and
CRM-M-25305-2021.
Date of Decision: 10.11.2021.**

Mustaq Khan @ Kala

....Applicant/Petitioner.

Versus

State of Punjab

....Respondent.

CORAM: HON'BLE MR. JUSTICE LALIT BATRA

Present: Mr. Parminder Singh Sekhon, Advocate
for applicant/petitioner.

Mr. Anmol Singh Sandhu, Assistant Advocate General, Punjab.

Lalit Batra, J.(Oral)

Case has been taken up for hearing through Video Conferencing.

CRM-36039-2021

Copy of order dated 25.05.2021 (Annexure A/1) is taken on record, subject to all just exceptions.

CRM is allowed.

Main Case

This petition under Section 439 Cr.P.C for grant of regular bail has been moved by petitioner-**Mustaq Khan @ Kala** in case FIR No.49 dated 12.04.2021 under Sections 22 and 29 of NDPS Act, registered at Police Station Amargarh, District Sangrur.

Learned counsel for the petitioner *inter alia* contends that prosecution version, as alleged, is totally concocted one and there is no iota of truth therein. He further urges that allegedly during personal search of

petitioner, ten (10) small-sized plastic bottles, each bottle labelled as “WINCIREX” and each containing 100ml of liquid material were recovered. He further urges that allegedly during personal search of co-accused Sukhdeep Singh @ Seepa, Manpreet Singh, Lakhvir Singh @ Lakha and Dalvir Singh, contraband of different quantities were recovered. He further urges that in view of ratio laid down in **Amar Singh Ramjibhai Barot Vs. State of Gujarat, (2005) AIR (SC) 4248,** recovery has to be treated as individual recovery because the same was effected in personal search of petitioner. He further urges that even otherwise alleged recovery of contraband (1000ml Codeine Phosphate) is to be termed as 'non-commercial quantity'. He further urges that in view of ratio laid down in **Sandeep Kumar Vs. State of Punjab, 2019(4) RCR (Criminal) 741,** recovery of the contraband would remain debatable. He further urges that Section 2(viia) of NDPS Act defines the term “commercial quantity” in relation to narcotic drugs and psychotropic substances, means any quantity greater than the quantity specified by the Central Government by notification in the Official Gazette. He further urges that in terms of Serial No.28 of the Table attached to the NDPS Act when read in consonance with Section 2(viia) of the NDPS Act, 'Codeine' weighing upto one kilogram is to be termed as “intermediate or non-commercial quantity” and as such alleged contraband is to be categorized as of “non-commercial quantity”. He further submits that petitioner is languishing in custody since 12.04.2021 and he is no more required by the Police for any investigation purpose as after completion of investigation, final report as envisaged under Section 173 Cr.P.C. (*Challan*), has been presented and trial has commenced. He further

submits that since trial of the case would take sufficient time to conclude, no useful purpose would be served by keeping the petitioner in custody further and he may be released on bail.

On the other hand, learned State counsel while opposing the cause of petitioner has vehemently argued that in view of seriousness of offence, petitioner does not deserve the concession of bail.

I have heard learned counsel for the parties and have carefully gone through the record of the case.

At this stage, without commenting anything on the merits of the case lest it may prejudice the outcome of the trial but taking into consideration the fact that petitioner is languishing in custody since 12.04.2021; that petitioner is no more required by the Investigating Agency for investigation purpose as final report as envisaged under Section 173 Cr.P.C. (*Challan*) has already been presented in Court and since trial of the case would take sufficient time to conclude, no useful purpose would be served by detaining the petitioner in custody further, thus, he deserves the concession of bail.

In view of above, instant petition for grant of regular bail moved by petitioner-**Mustaq Khan @ Kala** is allowed and he is ordered to be released on bail on his furnishing personal/surety bonds to the satisfaction of Trial Court/Chief Judicial Magistrate/Duty Magistrate, Sangrur, as the case may be.

(LALIT BATRA)
JUDGE

10.11.2021

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