

CRM-M-25874-2020

Date of Decision: 16.02.2021

Nanak Singh @ Tota
vs.

...Petitioner

State of Punjab

...Respondent

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

Present: Mr.Divjyot S. Sandhu, Advocate for the petitioner.
Mr. Sidakmeet Sandhu, AAG, Punjab.

B.S. Walia, J. (VC)

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 to the petitioner during pendency of trial in case FIR No.79 dated 22.04.2019, registered under Section 22, NDPS Act, 1985, at Police Station Sultanpur Lodhi, District Kapurthala.

3. Learned counsel contends that on arrest of the on 22.04.2019, 255 grams of powder, wrapped in an envelope, was allegedly recovered from the petitioner, the petitioner was released on interim bail but on receipt of report from the FSL, that the recovered powder was containing tramadol, the petitioner was re-arrested on 03.02.2020 and is in custody since then. Learned Counsel contends that Challan has been filed but charges have not been framed and the trial is likely to take considerable period of time to conclude, therefore, no useful purpose would be served by keeping the petitioner in custody especially on account of circumstances prevailing due to Corona Virus pandemic. Learned counsel also relies on the decision of a Coordinate Bench in CRM-M-30672-2019,

decided on 17.09.2019.

4. Learned AAG, Punjab, on the other hand, contends that the petitioner is involved in another case i.e. FIR No.242 dated 02.10.2018, registered under Section 21-61-85 of the NPDPS Act, at Police Station Sultanpur Lodhi, District Kapurthala.

5. Faced with the aforementioned position, learned counsel for the petitioner contended that the powder which was allegedly recovered from the petitioner in an envelope was weighed on a computer scale along with the envelope and that the weight of the envelope in any case cannot be less than 5 to 10 grams plus in case of slight error in recording the weight, the benefit has to go in favour of the accused. Learned counsel contends that the learned trial Court has to take into account all aspects of the matter on the basis of evidence produced before it and since the contraband allegedly recovered from the petitioner is slightly more than the commercial quantity which is 250 grams, it will be a matter for the learned trial Court to consider the manner in which the weight was recorded, computer scale was used while ascertaining the quantity of the contraband and whether the weighing machine was approved/calibrated by the Weights and Measures Department, Government of Punjab. Learned counsel contends that the petitioner was initially arrested on 22.04.2019 but was released on interim bail on 03.07.2019, whereafter he was re-arrested on 03.02.2020 and in the circumstances, has been in custody for more than one year.

6. Without expressing any opinion on merits of the case, but taking into account the position noted above, the quantity of contraband

recovered from the petitioner will be a debatable issue before the trial Court. Besides, conclusion of trial will take considerably period of time, therefore, no useful purpose would be served by keeping the petitioner in custody. Accordingly, the present petition is allowed. Petitioner-Nanak Singh @ Tota is ordered to be released on regular bail during the pendency of the trial on his furnishing bail bond and surety bond to the satisfaction of the learned trial Court/Chief Judicial Magistrate/Duty Magistrate, provided he is not required in any other case and subject to the following terms:-

- (a) The petitioner shall comply with the conditions contained in Section 437(3) Cr.P.C.
- (b) In the event of absence of the petitioner on any date of hearing before the learned trial court, the benefit of bail allowed to the petitioner shall stand withdrawn and the trial Court shall be competent to cancel his bail bond and surety bond and proceed to procure his presence in accordance with law. In that eventuality the petitioner shall have to apply for bail afresh.
- (c) The petitioner shall not leave the country without the previous permission of the Court.

(B.S. Walia)
Judge

16.02.2021

'Rajesh'

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No