

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(223)

CRM-M-32086-2021

Date of decision:- 16.08.2021

Avtar Singh

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. D.S. Ganeriwala, Advocate for the petitioner.

Mr. Sandeep Singh Deol, DAG, Punjab.

...

SUVIR SEHGAL, J. (ORAL)

The Court has been convened through video conferencing due to Covid-19 pandemic.

This is the third petition under Section 439 of the Code of Criminal Procedure, 1973 seeking grant of regular bail in case FIR No.208 dated 11.10.2019 under Section 22 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "the NDPS Act"), registered at Police Station Sangat, District Bathinda.

FIR (Annexure P-1) came to be registered when on the basis of suspicion, two persons who were riding a motorcycle were stopped and a recovery of 75 vials of WINCIREX and 64 strips of CARISOMA was effected from Jarnail Singh @ Jerry who was sitting on the pillion. The petitioner who was driving the motorcycle and the co-accused were both arrested on the spot.

Counsel for the petitioner has contended that the petitioner has clean antecedents, the recovery has been effected from the co-accused and the petitioner was not aware of the contraband being carried by him. He submits that though the quantity of contraband recovered from the co-accused falls in the commercial category, but the petitioner who is in custody since the date of his arrest, deserves to be enlarged on bail as the investigation qua him is complete and the challan has been presented, but the trial is not progressing.

Counsel submits that the first petition seeking grant of regular bail was withdrawn after arguments on 28.10.2020 (Annexure P-6) and the second petition which was filed seeking grant of interim bail was withdrawn on 29.07.2021 (Annexure P-7) with liberty to file a fresh one with better particulars.

Per contra, learned State counsel, upon instructions from ASI Charanjit Singh has opposed the petition. He submits that the bar under Section 37 of the NDPS Act is attracted and the petitioner is not entitled to be released on bail. As per his instructions, challan has been presented on 21.12.2019, charge has been framed on 07.01.2020 but due to the spread of the pandemic, no prosecution witness could be examined out of the 13 witnesses mentioned in the challan.

I have considered the submissions of counsel for the parties.

Hon'ble Supreme Court in *Union of India vs K.A. Najeer (2021) 3 SCC 713* has held that once timely trial is not possible, the accused is entitled to be released on bail. Even though the recovery effected from the

co-accused is of commercial quantity, but considering the fact that the petitioner has unblemished antecedents and has been suffering incarceration since the last more than 01 year and 10 months, he is entitled to be released on bail, during the pendency of the trial.

Without commenting upon the merits and de-merits of the case, the petition is allowed and the petitioner, namely, Avtar Singh, is ordered to be released on bail on his furnishing adequate bail/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate.

It is clarified that any observation made hereinabove shall not be construed to be a reflection of opinion on the merits of the case.

(SUVIR SEHGAL)
JUDGE

16.08.2021
Kamal

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No