

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-36150-2021 (O&M)
Date of decision: 07.12.2021

Davinderpal @ Kaka

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Sandeep Arora, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this 2nd petition is for grant of regular bail in FIR No.53 dated 06.04.2020 under Section 22 of NDPS Act and Section 188 IPC, registered at Police Station Cantt. Jalandhar; earlier one was dismissed vide order dated 18.02.2021.

Learned counsel for the petitioner submits that new ground for filing this second petition is that the investigation is complete and the petitioner is in long custody and has relied upon the order dated 23.08.2021 passed in CRM-M-33028-2021, vide which co-accused of the petitioner, namely Ramandeep Bangar @ Ramandeep has already been granted the concession of

regular bail. The operative part of the order reads as under: -

“...Learned counsel for the petitioner submits that the new ground for filing the present petition is that the period of custody of 01 year and 04 months has already elapsed and till date no prosecution witness has been examined. Learned counsel for the petitioner further submits that as per the allegations in the FIR, registered at the instance of ASI Harbhajan Lal, when he was present at a barrier on account of curfew duty, he noticed that a motorcycle was coming from a village side. Two persons were on the motorcycle and the driver became perplexed on seeing the police party and tried to turn back. The driver of the motorcycle took out a plastic envelop from the pocket of his shirt and thrown on the side of the road and similarly the pillion rider also thrown the plastic envelope which he was carrying on the side of the road. Both the persons were apprehended on suspicion and on inquiry, they disclosed their name as Ramandeep, who was driving the motorcycle and Davinderpal @ Kaka, who was the pillion rider. Thereafter, the Investigating Officer with the help of his associates took the envelops, thrown by both the aforesaid persons and from the envelop, thrown by Ramandeep, 13 vials of Avil injections weighing 10 grams each were recovered and from the envelop, thrown by Davinderpal @ Kaka, 13 injections of Rexogesic 2 ml each were recovered. On the personal search of both the said accused, no intoxicant was recovered.

Learned counsel for the petitioner submits that though it will be a matter of trial whether the provisions of Section 42 has been properly followed or not yet there will be another aspect that before conducting the search, no notice under Section 50 of the Act was given to both the accused.

Learned counsel for the petitioner further submits that the petitioner is the first offender and is in custody for the last 01 year 04 months and 15 days.

Learned State counsel has, however, submitted that the custody certificate and has not disputed the factual position. He has, however, submitted that since it was a chance of recovery, the complainant, who is also the Investigating Officer was competent to effect the search and personal search of the accused.”

For the sake of brevity, facts are not reproduced again.

Learned counsel further submits that the petitioner is first offender; he is not involved in any other case and is in custody for the last about 01 year and 08 months and 12 intoxicant injections of Buprenorphine Injection IP (Rexogesic) 2 ml each and 12 injections of Pheniramine maleate 10 ml were recovered from the petitioner.

Learned State counsel has filed the custody certificate dated 06.12.2021 in the Court today and has not disputed the factual position that the petitioner is not involved in any other. It is submitted that out of total 11 prosecution witnesses, only 01 PW has been examined so far.

After hearing learned counsel for the parties, without commenting

anything on merits of the case and considering the aforesaid submissions, this petition is allowed and the petitioner is directed to be released on regular bail subject to furnishing his bail/surety bonds, to the satisfaction of the trial Court/Illaqa Magistrate/Duty Magistrate, concerned.

Petition is disposed of.

[ARVIND SINGH SANGWAN]
JUDGE

07.12.2021
vishnu

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No