

CRM-M-38363-2021

Date of Decision : 13.12.2021

Rajwinder Singh @ Raju

...Petitioner

Versus

State of Punjab

....Respondent

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

Present : Mr. Prateek Pandit, Advocate for the petitioner.

Mr. Navdeep Chhabra, DAG, Punjab.

B.S. Walia, J. (Oral)

1. Prayer in the second petition under Section 439 of Cr.P.C., is for grant of regular bail in case FIR No.318 dated 23.12.2020, registered under Section 22 NDPS Act, 1985, at Police Station Kotwali, District Kapurthala.

2. Learned counsel contends that vide order Annexure P/3, the petitioner was permitted to withdraw CRM-M-16080-2021, vide order dated 26.08.2021, with liberty to file appropriate petition, in accordance with law, on account of receipt of FSL report indicating the recovered material to be prohibited contraband under the NDPS Act, 1985.

3. Learned counsel contends that the petitioner has been in custody since 23.12.2020 i.e. for the last about one year, challan has been presented in April, 2021, investigation is complete, therefore, no useful purpose would be served by keeping the petitioner in custody especially in view of the fact that trial of the case is likely to take long time to conclude. Learned counsel further contends that on arrest of the

petitioner, 110 grams of intoxicating powder containing alprazolam salt was recovered from the bag carried by the petitioner and that more than 100 grams of the aforesaid salt was commercial quantity but a perusal of Annexure P/1 i.e. FIR itself reveals that the salt was weighed along with the bag, in which, it was contained. Learned counsel relies upon the decision of this Court in Rajinder Singh alias Raja vs. State of Punjab, CRM-M-53722-2018, decided on 27.05.2019, to contend that in the aforementioned case, directions had been issued to the State of Punjab, Haryana and UT Chandigarh to all concerned officers to take precautions at the time of weighing contraband i.e. to mention whether recovered material had been weighted through electronic scale or ordinary scale, the weight of envelope or the packet etc. was not included while carrying out the measurement, so as to ensure that there was no doubt regarding the incriminating material.

4. Per contra, learned DAG, Punjab, while admitting that the recovery of alprazolam salt is only 110 grams, and that commercial quantity starts beyond 100 grams and that the salt was weighed along with the bag in which it was contained, contends that the petitioner is a habitual offender and is involved in six other cases under the NDPS Act. Details of the same are as under :-

i) Petitioner was convicted and sentenced to undergo imprisonment of one month and to pay fine of Rs.1000/-, in case FIR No.209 dated 05.09.2018, registered at Police Station Kotwali, District Kapurthala, involving recovery of 105 grams of tramadol and that he has already undergone the said sentence.

ii) Petitioner was convicted and sentenced to undergo 28 days imprisonment in case FIR No.68 dated 29.08.2019, registered under Sections 21/27 of the NDPS Act, at Police Station Begowal, District Kapurthala, involving recovery of 2 grams of heroin and that he has already undergone the said sentence.

iii) Petitioner was convicted and sentenced to undergo imprisonment of one month, in case FIR No.39 dated 26.03.2017, registered under Section 22 of the NDPS Act, at Police Station Sadar, District Kapurthala involving recovery of 25 grams of dexpopropoxydhene and the petitioner has already undergone the said sentence.

iv) The petitioner was also involved in case FIR No.113 dated 25.05.2015, registered under Section 22 of the NDPS Act at Police Station Kotwali, District Kapurthala, but the petitioner was acquitted in the said case vide judgment dated 17.09.2019.

v) The petitioner is involved in case FIR No.121 dated 25.06.2016, registered at Police Station Kotwali, District Kapurthala, involving recovery of 100 grams of alprazolam, which is pending trial and in which the petitioner was declared proclaimed offender on 09.04.2021 and was arrested thereafter on 23.04.2021.

vi) Petitioner is facing trial in case FIR No.76 dated 11.04.2020, registered under Section 22 of the NDPS Act,

at Police Station Kotwali, District Kapurthala, involving recovery of 10 grams of heroin.

5. I have considered the submissions of learned counsel and gone over the paper book. Admittedly, the petitioners involvement in seven cases under the NDPS Act, details of which have been mentioned above including the instant case is not in dispute. In three cases, there is recovery of 100 grams of alprazolam, 105 grams of tramadol and 110 grams of alprazolam respectively while in three cases there is recovery of 25 grams of dexpopropoxydhene, 10 grams of heroin and 2 grams of heroin respectively while in one case the petitioner has been acquitted. Taking into account all aspects of the matter as also the involvement of the petitioner in seven cases under the NDPS Act, I am of the considered view that the petitioner being a habitual offender is not entitled to the concession of bail.

6. Accordingly, finding no merit in the petition, the same is dismissed.

(B.S. Walia)
Judge

13.12.2021

rajesh

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>