

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

CRM-M-34279-2020 (O&M)

Date of decision: 28.07.2021

Raj Kumar @ Raju

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Yashpal Thakur, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

(through video conferencing)

ARVIND SINGH SANGWAN, J. (Oral)

This petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No. 116 dated 03.09.2019, registered under Section 22 of the Narcotic Drugs & Psychotropic Substances Act, 1985 at Police Station Amloh, District Fatehgarh Sahib.

Learned counsel for the petitioner submits that as per allegations in the FIR, registered at the instance of ASI Gurmeet Kumar, it is stated that when on 03.09.2019, he along with other police officials were on patrol duty, he noticed that one motorcycle rider was coming from Gobindgarh side. The complainant gave a signal with his torch to stop him for the purpose of checking. The motorcycle rider, on seeing the police party, first tried to slow down the motorcycle and then suddenly tried to run away, however, he was apprehended by the police party. A black color polythene bag was hanging on the handle of the motorcycle. Upon inquiry,

the persons, who was riding the motorcycle, disclosed his name as 'Raj Kumar @ Raju' i.e. the present petitioner. On the basis of suspicion, ASI Gurmeet Kumar disclosed his identity and gave him a notice to be searched either before a Gazetted Officer or a Magistrate. Upon this, the petitioner reposed confidence in the Investigating Officer to take search of the bag as well as the personal search of the petitioner. The memo was prepared and thereafter, complainant/IO conducted the search and recovered 500 tablets of Clovidol-100 SR and 2300 tablets of Lomotil.

Learned counsel for the petitioner further submits that petitioner is in judicial custody for the last about 01 year and 11 months and he is not facing trial in any other case under the NDPS Act.

Learned counsel further submits that it will be a matter of trial whether the entire investigation conducted by ASI Gurmeet Kumar, who was the complainant as well as the Investigating Officer of the case, was in accordance with law or not.

Learned counsel further submits that after the petitioner was apprehended, no *ruqa* was sent to the police station and the provisions of Section 42 of the Act were not complied with, which is also to be decided during the course of trial.

Learned State counsel, on the basis of the custody certificate filed today, has not disputed the custody period of petitioner and submitted that challan was presented on 29.01.2020 and charges were framed on 27.02.2020, however, out of total 15 prosecution witnesses, only 02 witnesses have been examined so far as the trial was delayed due to COVID-19 situation.

I have heard learned counsel for the parties.

Without commenting upon the merits of the case, considering the submissions made by learned counsel for the petitioner as well as the fact that petitioner is in long judicial custody and the trial is still at the initial stage of recording the statement of prosecution witnesses, the instant petition is allowed. The petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate/Illaq Magistrate, concerned.

28.07.2021

Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No