

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

**CRM-M-39683-2021
Date of decision: 29.09.2021**

Sanjay Kumar

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

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

Mr. Chetan Sharma, AAG, Haryana.

(Through video conferencing)

ARVIND SINGH SANGWAN, J. (Oral)

This is the second petition that has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No. 288 dated 26.07.2019, registered under Section 22C/61/85 of the NDPS Act at Police Station Rania, District Sirsa.

The first petition, bearing CRM-M-37658-2020, was dismissed on 23.02.2021.

Learned counsel for the petitioner submits that the petitioner was nominated on the disclosure of co-accused Surender @ Kaka, who has been granted concession of regular bail by this Court, vide order dated 10.08.2021 passed in CRM-M-42643-2019. The operative part of the order reads as under:

“Learned counsel for the petitioner submits that as per allegations in the FIR, the police party, while on patrol duty, apprehended a young man coming on bike, holding a polythene bag in his hand. He tried to turn his

motorcycle back, but he lost the balance and polythene bag fell down on the earth and the complainant/Investigating Officer apprehended him and he disclosed his name as Surender Singh @ Kaka (petitioner). Thereafter, search of the motorcycle and black coloured polythene bag was conducted and recovery of 04 boxes make Ridley Parvorin-spasp Tramadol Batch No.PAR1912, containing 20 strips each and 10 capsules in each strip, was effected. The petitioner could not produce any licence. Thereafter, the Investigating Officer sought opinion of the doctor regarding nature of contraband recovered and the doctor gave his opinion that these capsules carry narcotic substance and falls under the NDPS Act.

Learned counsel for the petitioner further submits that in fact, 03 FIRs were registered in the same police station. First FIR No.286, which was registered at 9.49 pm, in which one co-accused Des Raj was found in possession of 160 intoxicant capsules and he nominated the petitioner. Similarly, in another FIR No.287, registered after 11 minutes i.e. at 10.00 pm, in which another co-accused Gurdev Singh was found in possession of 790 intoxicant capsules and he also disclosed name of the petitioner. It is also submitted that present FIR No.288 was registered at 11.29 pm showing that the petitioner was carrying contraband himself. It is next submitted that in the earlier two FIRs, the petitioner has already been released on regular bail either by the Court of Sessions or by this Court.

Learned counsel for the petitioner has further submitted that the petitioner, except for three FIRs, which were registered in a quick succession of about one hour and in two cases, he was nominated and in one case, recovery has been shown and he has no previous

history of involvement in any NDPS Act. It is also submitted that it will be a matter of trial whether provisions of Section 42 of NDPS Act were complied with or not, as perusal of the FIR shows that immediately after the petitioner was apprehended with a polythene bag allegedly containing intoxicant capsules, neither any ruqa was sent to the police station nor second Investigating Officer was called and the same Investigating Officer, after apprehending the petitioner, conducted the search and effected the recovery. Thereafter, the information was sent for registration of FIR. It is thus submitted that it will also be a matter of trial whether noncompliance of Section 50 of NDPS Act would have bearing on merits of the case. Learned counsel has lastly argued that the petitioner is in custody for the last 02 years and 13 days and out of total 15 prosecution witnesses, none has been examined till date, though the charges were framed way back in February, 2020.

Learned State counsel has filed the custody certificate dated 09.08.2021 in the Court today and has not disputed the factual position. It is submitted that the petitioner was nominated in FIRs No.286 and 287 on the basis of disclosure statements of aforesaid co-accused and later on, he was granted the concession of regular bail. He also could not dispute that till date, no prosecution witness has been examined and the trial is delayed due to COVID-19 situation in the country.”

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

Learned counsel for the petitioner further submits that though the petitioner is involved in one more FIR under the NDPS Act, however, he is on bail in the said case and it will be a matter of trial whether the disclosure of a co-accused is admissible against the petitioner or not.

Learned State counsel has filed the custody certificate and has not disputed the factual position. As per custody certificate, the petitioner is in judicial custody for the last more than 01 year and 02 months.

I have heard learned counsel for the parties.

Without commenting upon the merits of the case, considering the fact that main accused has already been granted concession of regular bail as noticed above; the petitioner is in judicial custody for the last more than 01 year and 02 months and also in view of the fact that conclusion of trial is likely to take some time, 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.

29.09.2021

Waseem Ansari

**(ARVIND SINGH SANGWAN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No