

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

CRM-M-35037-2020(O&M)

Date of decision:-28.7.2021

Mohammad Tahir

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Vivek Thakur, Advocate
for the petitioner.

Mr.J.S. Ghuman, DAG, Punjab.

H.S. MADAAN, J.

Case taken up through video conferencing.

This petition for regular bail has been filed by petitioner – Mohammad Tahir– an accused in FIR No.117 dated 20.9.2019, under Section 22 of NDPS Act, 1985, registered with Police Station City-II, Malerkotla, District Sangrur.

Briefly stated, the facts of the case as per prosecution story are that one Mohammad Shahid, an accused in FIR No.118 of 19.9.2019, under Section 22 of NDPS Act during the course of interrogation disclosed that he had been purchasing the intoxicant tablets from the present petitioner Mohammad Tahir and thereafter supplying those in the villages. On the basis of said statement of Mohd. Shahid, FIR in the present case was recorded. Petitioner/accused Mohammad Tahir was arrested in this case on 20.9.2019 and 3500 intoxicant tablets make Tramadol Hydrochloride 100 mg, 2000 loose tablets and drug money of

Rs.16,390/- were recovered from him. The petitioner had approached the Court of Judge, Special Court, Sangrur by filing an application for regular bail, which was dismissed by the said Court vide order dated 28.9.2020, as such, he has approached this Court with the same request.

Notice of the petition was given to respondent – State and counsel representing the State has put in appearance.

I have heard learned counsel for the parties besides going through the record.

Learned counsel for the petitioner has contended that the prosecution story with regard to recovery of contraband from the petitioner/accused is highly unconvincing and unnatural; the petitioner does not have any past criminal record; he has suffered long incarceration; he is a registered chemist; therefore, he be granted concession of regular bail.

Whereas learned State counsel has opposed the request vehemently stating that the contraband recovered from the petitioner/accused comes within definition of commercial quantity, attracting bar of Section 37 of NDPS Act. Therefore, he should not be granted concession of regular bail. Learned State counsel expressed apprehension that if granted bail to the petitioner, there is likelihood of his absconding and tampering with the prosecution evidence by giving threats and inducement to the prosecution witnesses.

After hearing the rival contentions and going through the record, I find that the petition is doomed for failure. While deciding a petition for regular bail, the merits of the case are not to be gone into

deeply since it is function of the trial Court to do so while determining guilt of the accused. The petitioner may take any plea with regard to his innocence before the trial Court where challan is said to have been filed and trial is going on. This Court cannot hold parallel proceedings and proceed to test the prosecution story on touchstone of merits. While deciding a petition for bail mainly the prosecution story is to be seen. The custody certificate of the petitioner/accused goes to show that he is involved in another case under NDPS Act i.e. FIR No.118 dated 19.9.2019, which means that the petitioner has got a past criminal record. Since the recovery effected from him in terms of the prosecution story comes within definition of commercial quantity, bar of Section 37 of the Act comes into play, which reads as under:

Offences to be cognizable and non-bailable.—

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for 3 [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force

on granting of bail.

In the present case, I do not see any reason to record satisfaction that there are reasonable grounds for believing that the petitioner is not guilty of such offence and that he is not likely to commit any offence while on bail.

Under the circumstances of the case, the apprehension expressed by the State counsel that if petitioner is granted bail, there is every likelihood to his absconding and even tampering with the prosecution evidence cannot be brushed aside lightly.

Therefore, finding no merit in the petition, the same stands dismissed.

28.7.2021
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No