IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M-37944-2020

Date of Decision: 07.09.2021

Gursant Singh @ Santu ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. L.S.Sekhon, Advocate, for the petitioner.

Mr. H.S.Multani, AAG, Punjab,
assisted by SI Hargobind Singh.

GURVINDER SINGH GILL, J. (Oral)

1. The petitioner has approached this Court seeking grant of regular bail in respect of a case registered against him vide FIR No.60 dated 26.05.2020 at Police Station City Rampura, District Bathinda, under Sections 22 & 25 of the NDPS Act.

2. As per the case of the prosecution, on 26.05.2020, when the police party laid barricades on the road leading from Village Rampura to Bhunder, then a motor-cycle bearing registration No.PB-03W-2298 was noticed coming from the side of Village Bhunder. Two persons were riding on the said motor-cycle and they were carrying a transparent plastic polythene bag in between them. They were signaled to stop, but the riders tried to turn back and in that process fell down. It is the case of the prosecution that the said two persons after throwing the transparent plastic polythene bag tried

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to escape, but were nabbed by the police. It is alleged that strips of intoxicant tablets were clearly visible from the said polythene bag. Upon inquiry, the driver of the motor-cycle disclosed his name as Baljinder Singh @ Nikka and the pillion rider disclosed his name as Gursant Singh @ Santu (petitioner). The polythene bag thrown by them was found to contain 12000 tablets make 'Clovidol-100 SR'.

3. Learned counsel for the petitioner has submitted that he has falsely been implicated in the instant case and that it is highly unlikely that a person indulging in drug pedaling would carry drugs openly or in such a manner that they are easily visible to a passer-by. It has been submitted that no such person would like to attract attention of anybody else much less the police by carrying contraband in a polythene bag from which it is easily visible and identifiable. Learned counsel has further submitted that the petitioner cannot be attributed conscious possession of the contraband, as the same was not recovered from his possession, but was recovered from a polythene bag thrown on the ground.

4. Opposing the petition, learned State counsel has submitted that since the polythene bag had been thrown by the petitioner and his co-accused and the same was immediately recovered by the police, the petitioner cannot feign ignorance about the contents of the polythene bag and as such has to be attributed conscious possession of the contraband recovered from the polythene bag.

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Learned State counsel has, however, informed that the petitioner as on date has been behind bars since the last 1 year and 3 months. It has been informed that the petitioner stands convicted in one more case under the NDPS Act and that in the instant case no PW out of cited 13 PWs has been examined.

5. I have considered rival submissions addressed before this Court.

6. As far as the contention regarding conscious possession is concerned, this Court at this stage would not agree with the said contention inasmuch as the petitioner and his co-accused, who were carrying the polythene bag, had themselves thrown the same on the ground and there was none else at the spot other than the police officials. In these circumstances, the petitioner and his co-accused can well be attributed conscious possession of the contraband contained in the polythene bag thrown by them. However, this Court does find that it is highly unlikely that a person, who has to commit an offence, would commit the same in such a way that it may be easily detected, as has been propounded in the instant case where it is alleged that the petitioner and his co-accused were carrying contraband in a transparent polythene bag and from which the contents i.e. strips of intoxicant tablets were clearly visible. It will certainly be debatable as to whether the said story is acceptable or not. In any case, the petitioner has been behind bars for a substantial period of 1 year and 3 months and the conclusion of trial will consume some time, as none of the PW out

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of cited 13 PWs has been examined so far. In these circumstances, the petition is accepted and the petitioner is ordered to be released on regular bail on his furnishing bail bonds/surety bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

07.09.2021 **(GURVINDER SINGH GILL)**
Vimal **JUDGE**

Whether speaking/reasoned: **Yes/No**
Whether reportable: **Yes/No**

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