

**111+230 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-18401-2021 in/and
CRM-M-38093-2020
Date of Decision: 22.07.2021**

Davinder Kumar alias Babbu

.....Petitioner

Vs.

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Gurdarshan S. Sidhu, Advocate,
for the applicant-petitioner.

Mr. Neeraj Poswal, A.A.G., Haryana.

AMOL RATTAN SINGH, J. (ORAL)

Case heard via video conferencing.

CRM-18401-2021

Learned counsel for the applicant-petitioner submits that this application having been filed on an earlier date seeking advancement of the date of hearing in the accompanying petition, it has been rendered infructuous with the petition itself listed for actual hearing today.

Disposed of as such.

CRM-M-38093-2020

On 13.07.2021, the following order had been passed by this court:-

“Case heard via video conferencing.

The facts of this case having turned out to be different from those in the connected petitions, it will be heard separately on the next date of hearing.

By this petition, the petitioner seeks the concession of regular bail under the provisions of Section 439 of the Cr.P.C., upon FIR no.537, dated 24.8.2021, having been registered at Police Station Sirsa City, alleging therein the commission of an offence punishable under Section 22 of the NDPS Act, 1985.

Learned counsel for the petitioner on an earlier date had raised an issued that there being non-compliance of Section 50 of the NDPS Act, 1985, the petitioner deserves to be admitted to bail, also for the reason that he has been in custody for about 1 year and 11 months now, with no prosecution witness having so far been examined.

On that date, learned counsel appearing for the State of Haryana had referred to a judgment of the Supreme Court in Madan Lal and another vs. State of Himachal Pradesh (Appeal (Crl.) 786 of 2002, decided on 19.8.2003).

Today, Mr.Poswal, learned AAG, Haryana, refers to another judgment of the Supreme Court in Kulwinder Singh and another vs. State of Punjab, 2015(6) SCC 674, to submit that where there is no personal search of an accused, and the recovery is made from either a bag etc. possessed by him, there would be no need to produce the person before a Magistrate/gazetted officer before conducting any personal search.

He submits that in the present case it was a chance recovery even as per the FIR, by the police party that was patrolling the area, when the

petitioner was riding a motorcycle (driving) and upon seeing the police party he attempted to turn the motorcycle around but could not do so due to a narrow passage at the bridge.

Thereafter the person sitting behind the petitioner, i.e. his coaccused Sonu @ Dena Nath, was found to be carrying a plastic bag on his knees which, when opened, was found to be containing 6 boxes and 60 strips of tramadol hydrichloride, the total number of capsules coming to 1800, with Rs.9,000/- also stated to have been found in the said plastic bag.

He next submits that as regards an argument raised on an earlier date by learned counsel for the petitioner, to the effect that the bag not having been recovered from the petitioners' possession, he cannot be stated to be having conscious knowledge of the co-accused carrying something in his bag, that argument is not valid in view of the fact that he tried to turn his motorcycle on seeing the police party, which obviously would indicate his guilty mind, knowing that his companion was carrying contraband with him.

In that context, he relies upon paragraph 14 of the aforesaid judgment (which presently for brevity is not being reproduced, as counsel for the petitioner is having some problem in his net work connection).

Obviously, on the next date of hearing, he would be required to address arguments in that context.

Adjourned to 22.7.2021.”

Today, learned State counsel points to paragraph 14 of the judgment in **Kulwinder Singhs'** case (*supra*), to submit that in that case, upon 110 grams of poppy husk having been found in the truck that was apprehended by the police and the accused having run away from the spot, with them also having absconded from their villages for the next few days, it was held by the Supreme Court that they could not take the plea of having knowledge of what was lying in the truck, because it was not one single obscure bag lying in some corner of the truck.

He reiterates that in the present case the petitioner being the rider (driver of the motor cycle) and he having attempted to turn around at the time that the police party per chance came across him and his co-accused, while patrolling, he obviously knew that his companion was carrying something to hide due to which he did not wish to be apprehended by the police party.

Mr. Sidhu contends that other than the fact that the petitioner has been in custody for 01 year and 11 months now, with the trial not having progressed at all, the fact is that since the accused were admittedly 'triple riding' on a motor-cycle and were not wearing helmets, upon seeing the police party the petitioner tried to turn around so that they were not *challaned* for traffic offences; and simply because of his turning around, he cannot be accused of having knowledge of what was contained in a 'zipped up' bag that one of the pillion riders on the motorcycle was carrying.

Learned State counsel counters by stating that there is no mention of the bag being zipped, though of course it is stated in the FIR that it was opened by a police official, upon which contraband was found in it.

Looking at the aforesaid contention of learned counsel for the petitioner, without making any comment at this stage on the merits of the case (which would be naturally gone into by the trial court as per evidence led before it), in my opinion as regards grant of bail to the petitioner, it is an appropriate case where sub-clause (ii) of clause (b) of sub-section (1) of Section 37 of the NDPS Act, 1985, should be invoked by this court.

Consequently, again to repeat, without making any comment on the actual merits of the case, the petition is allowed. The petitioner shall be admitted to bail upon his furnishing adequate bail bonds and surety bonds to the satisfaction of the learned trial court/Chief Judicial Magistrate/Duty Magistrate concerned.

[It is also to be observed that upon query to learned State counsel, he has also instructions that there is no other criminal case registered against the petitioner.]

July 22, 2021
nitin

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
No.