

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

105

**CRM-M-39103-2020
Date of decision: 25.03.2021**

Balwinder Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

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

Mr. Rana Harjasdeep Singh, DAG, Punjab
for the respondent-State.

ARUN KUMAR TYAGI, J (ORAL)

(The case has been taken up for hearing through video conferencing.)

The petitioner has filed the present third petition under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail in case FIR No.39 dated 29.04.2018 registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act') in Police Station Nandgarh, District Bathinda.

As per the prosecution version the police party headed by SI Bhupinder Singh was going from over bridge of canal river of Chak Attar Singh Wala to over bridge Ghona on Government vehicle for patrolling. When they reached near over bridge Ghona, the petitioner came towards them and on seeing the police party threw the black colour polythene/envelop held in his right hand on the road side and tried to get into the fields in his left side. The petitioner was

apprehended and on search 200 strips having 10 tablets each totaling 2000 tablets containing Tramadol and 2 strips having 10 tablets each totaling 20 tablets containing Alprazolam were recovered from polythene bag thrown on the road side. Pursuant to registration of FIR, the police investigated the case and on completion of investigation, the police charge-sheeted the accused.

The first two petitions filed by the petitioner for grant of regular bail were dismissed as withdrawn vide orders dated 11.01.2019 and 10.05.2019.

The petitioner being in custody has filed the present petition for grant of regular bail.

The petition has been opposed by learned State Counsel. However, no reply has been filed by the respondent-State.

Custody certificate has been filed by learned State Counsel through e-mail print out of which is taken on record.

I have heard learned Counsel for the petitioner and learned State Counsel and gone through the relevant record.

Learned Counsel for the petitioner has argued that the petitioner has been falsely implicated in the case. Recovery was allegedly made from polythene/envelope thrown on the road side and the petitioner cannot be said to be in conscious possession thereof. Mandatory provisions of the NDPS Act were not complied with. No independent witness was joined. The petitioner is not involved in any other case under the NDPS Act. Rigors of Section 37(1)(b) of the NDPS are not applicable qua the petitioner. Trial is likely to take long

time. No useful purpose will be served by his further detention in custody. Therefore, the petitioner may be ordered to be released on bail. In support of his arguments, learned Counsel for the petitioner has placed reliance on the observations in ***CRM-M-7437-2019 titled as 'Kashmir Singh Vs. State of Punjab' decided on 21.02.2019; CRM-M-181317-2020 (O&M) titled as 'Vijay Kumar Vs. State of Punjab' decided on 14.08.2020; CRM-M-52042-2019 (O&M) titled as 'Jarnail Singh Vs. State of Punjab' decided on 11.12.2019 and CRM-M-24299-2019 (O&M) titled as 'Lakhbir Singh @ Lakha Vs. State of Punjab' decided on 22.11.2019.***

On the other hand, learned State Counsel has argued that the petitioner kept in his conscious possession 200 strips having 10 tablets each totaling 2000 tablets containing Tramadol and 2 strips having 10 tablets each totaling 20 tablets containing Alprazolam which fell in the category of commercial quantity. The petitioner does not deserve the concession of regular bail. Therefore, the petition may be dismissed.

However learned State Counsel has conceded that the petitioner is not involved in any other case under the NDPS Act.

In ***CRM-M-7437-2019 titled as 'Kashmir Singh Vs. State of Punjab' decided on 21.02.2019; CRM-M-181317-2020 (O&M) titled as 'Vijay Kumar Vs. State of Punjab' decided on 14.08.2020; CRM-M-52042-2019 (O&M) titled as 'Jarnail Singh Vs. State of Punjab' decided on 11.12.2019 and CRM-M-24299-2019 (O&M) titled as 'Lakhbir Singh @ Lakha Vs. State of Punjab' decided on***

22.11.2019 where recovery of narcotic/psychotropic drug/substance was made from bag allegedly thrown on the road side by the petitioner, the case was considered to involve question as to whether the petitioner could be said to be in conscious possession and the petitioner was granted regular bail.

In '*Chitta Biswas @ Subhash Vs. State of West Bengal*' *Criminal Appeal No.245 of 2020 SLP (Criminal) No.8823 of 2019 decided on 07.02.2020* where recovery of 46 bottles of phensydryl cough syrup containing codeine mixture above commercial quantity was made from the accused who was in custody since 21.07.2018 and out of 10 prosecution witnesses only 4 prosecution witnesses had been examined, the accused was granted bail by Hon'ble Supreme Court.

In the present case recovery of 2020 tablets was allegedly made from polythene bag/envelope allegedly thrown on the road side by the petitioner and the case involves debatable question as to whether the petitioner can be said to be in conscious possession thereof. The petitioner is not involved in any other case under the NDPS Act. Rigors of Section 37(1)(b) of the NDPS Act stand satisfied by due implication. The petitioner is in custody since 29.04.2018. The prosecution evidence is yet to be concluded. The trial is likely to take long time due to restrictions imposed to prevent spread of infection of Covid-19.

In view of the above referred judicial precedents and facts and circumstances of the case but without commenting on the merits of the case, I am of the considered view that the petitioner deserves the concession of regular bail.

Therefore, the petition is allowed and the petitioner is ordered to be released on regular bail on furnishing of bail bonds to the satisfaction of the trial Court/Duty Magistrate/Chief Judicial Magistrate concerned.

However, bail is granted to the petitioner subject to the condition that he will not commit any offence under the NDPS Act after his release on bail and in case of involvement of the petitioner in commission of any offence under the NDPS Act in future, his bail in the present case shall also be liable to be cancelled on application to be filed in this regard.

25.03.2021
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(ARUN KUMAR TYAGI)
JUDGE

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