

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

105

CRM-M-40296-2020

Date of decision: 15.02.2021

Brijesh Kumar Mishra

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Arpandeeep Narula, Advocate
for the petitioner.

Mr. Ranvir Singh Arya, Addl. A.G., Haryana
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 (first) petition under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail in case FIR No.361 dated 31.10.2020 registered under Sections 20 and 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "the NDPS Act") and Section 188 of the Indian Penal Code, 1860 at Police Station Sadar Sirsa, District Sirsa.

As per the prosecution version on 31.10.2020, the police party headed by ASI Tarsem Singh apprehended the petitioner on suspicion and on search recovered 4 Kgs. of ganja and 30 grams of heroin from his possession.

The petitioner, who is in custody since 31.10.2020, has filed the present petition for grant of regular bail.

The petition has been opposed by the learned State Counsel in terms of reply filed by way of affidavit of Sanjay Kumar,

Deputy Superintendent of Police, Sirsa.

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

Learned Counsel for the petitioner has submitted that the petitioner has been falsely implicated in the case. The alleged recoveries have been planted on the petitioner. No independent witness was joined at the time of alleged recovery. Mandatory provisions of the NDPS Act were not complied with. Even as per the allegations made in the FIR the quantity of ganja and heroin allegedly recovered from possession of the petitioner fall in the category of non-commercial quantity. Rigors of Section 37(1)(b) of the NDPS Act are not applicable to the present case. The petitioner has been falsely involved in one more case under the NDPS Act. The petitioner is on bail in that case. Involvement of the petitioner in other case cannot be a ground to refuse regular bail. The trial is likely to take long time due to restrictions imposed to prevent the spread of Covid-19 and no useful purpose will be served by further detention of the petitioner in custody during trial. Therefore, the petitioner may be granted regular bail.

In support of his arguments, learned Counsel for the petitioner has placed reliance on the judgment of Hon'ble Supreme Court in ***Criminal Appeal No.153 of 2020 titled as 'Prabhakar Tewari Vs. State of U.P. and another' decided on 24.01.2020*** and judgment of this Court in ***CRM-M No.3173 of 2021 titled as 'Baljinder Singh Vs. State of Punjab' decided on 28.01.2021***.

On the other hand, learned State Counsel has submitted that the petitioner is accused of having kept ganja and heroin in his

conscious possession. The petitioner is a habitual offender and is involved in one more case under the NDPS Act. In view of nature of accusation, gravity of the offence and quantum of sentence which the conviction may entail, the petitioner is not entitled to grant of regular bail.

Keeping in view the facts and circumstances of the case, nature of accusation and evidence against the petitioner, inapplicability of rigors of Section 37(1)(b) of the NDPS Act and the fact that the trial is likely to take long time due to restrictions imposed to prevent the spread of infection of Covid-19, but without commenting on the merits of the case, I am inclined to extend the concession of regular bail to the petitioner.

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

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

15.02.2021

Vinay

(ARUN KUMAR TYAGI)
JUDGE

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