

CRM-M No.41755 of 2020
Date of Decision : 31.03.2021

Krishan Lal

...Petitioner

Versus

State of Punjab

....Respondent

Coram : Hon'ble Mr. Justice B.S. Walia**Present :** Mr. Parminder Singh Sekhon, Advocate
for the petitioner.

Mr. Prabhjot Singh Walia, AAG, Punjab.

B.S. Walia, J. (VC)

1. Case is being taken up for hearing through Video Conferencing due to Covid-19 pandemic.
2. Prayer in the petition under Section 439 Cr.P.C. is for grant of regular bail to the petitioner in case FIR No.85 dated 12.07.2020, registered under Section 22, NDPS Act, 1985 at Police Station City Rampura, District Bathinda.
3. Learned counsel for the petitioner contends that as per the FIR, a police party was patrolling when they noticed a young person with cropped hair sitting under a tree near the wall of the Royal Estate Colony on the side lane of canal minor looking into / searching a transparent polythene bag lying on the ground in which strips of intoxicant tablets were clearly visible and on seeing the police party, said young man got

perplexed and tried to escape from the spot but fell down due to aobstacle, was apprehended and on checking of the transparent polythene bag, 160 strips of Alprazolam tablets IP 0.5 mg each containing 15/15 intoxicant tablets having batch No.2060120, manufacturing 01/2020, expiry 10/2021, total 2400 intoxicant tablets were recovered.

4. Learned counsel contends that no witness was present at the time of apprehending the petitioner or recovering the contraband from the transparent polythene bag, the plastic bag was not in the possession of the petitioner but was lying on the ground and the petitioner was alleged to be looking into / searching the same, therefore, the question as to whether the transparent polythene bag lying on the ground could be said to be in the conscious possession of the petitioner was a debatable issue, the petitioner was not involved in any other case under the NDPS Act, Investigation was complete, Challan had been presented and the petitioner was in custody since 12.07.2020, therefore no useful purpose would be served by detaining the petitioner as trial of the case would take considerable time to conclude.

5. Learned counsel relies upon the decision in CRM-M No.52427 of 2019 in case titled as 'Jagsir Singh versus State of Punjab', CRM-M No.6433 of 2018 in case titled as 'Pawan Kumar versus State of Punjab' and CRM-M No.14474 of 2020 in case titled as 'Dharminder Singh versus State of Punjab', in which bail was granted to the accused on the ground that where the plastic bag, containing contraband had been thrown away by the accused, question of conscious possession would be a matter of trial. Reliance has also been placed on the decision in CRM No.7055 of 2021 in/and CRM-M No.33733 of 2020 in case titled as

Punjab, in which question of conscious possession was treated as a debatable issue in view of the polythene bag which was in the hands of the accused was alleged to have been thrown by him on seeing the police party by holding that in such circumstances, presumption under Section 54 NDPS Act, 1985 could not be drawn, as there was no recovery from the conscious possession of the petitioner and the accused could not be linked with the recovery which was doubtful. In said case bail was allowed by taking into account that the petitioner-accused therein had undergone 09 months and 24 days of custody and there was no other criminal case pending/decided against him and the trial was not likely to conclude at an early date. Learned counsel has also relied upon the decision in CRM-M No.3320 of 2020 in case titled as 'Prince Kumar versus State of Punjab', decided on 01.09.2020, in which the accused on seeing the police party became perplexed and threw a plastic bag carried by him and tried to flee but was apprehended and on search of the plastic bag, recovery of narcotic substance was made. Bail was allowed in said case by taking into account that there was no independent witness of the occurrence, that false implication could not be ruled out, there was no other case under the NDPS Act registered against the petitioner, that in the circumstances, the petitioner was not likely to commit any offence under the NDPS Act while on bail, that trial was not likely to conclude at an early date besides the petitioner had been in custody for over one year.

6. Per contra, learned State Counsel contended that the petitioner was not entitled to grant of bail as the contraband recovered was of commercial quantity, therefore, bar of Section 37, NDPS Act would apply. However, it has not been disputed by learned State Counsel

that the petitioner is not involved in any other case under the NDPS Act.

7. I have considered the submissions of learned counsel for the parties. As per the FIR, a transparent polythene bag was lying on the ground and the petitioner was looking into / searching the same. However, no witness was present at the time of apprehending the petitioner or recovering the contraband from the transparent polythene bag, and in the circumstances, the question whether the plastic bag lying on the ground and which the petitioner was alleged to be looking into / searching the same, could be said to be in the conscious possession of the petitioner is a debatable issue, the petitioner is not involved in any other case under the NDPS Act, Investigation is complete, Challan has been presented and the petitioner is in custody since 12.07.2020, therefore no useful purpose would be served by detaining the petitioner as trial of the case is likely to take considerable time to conclude. Accordingly, without making any observation on the merits of the case but by taking into account the aforementioned aspects of the matter, it can reasonably be presumed that the petitioner is not likely to commit any offence under the NDPS Act while on bail. Accordingly, the petition for regular bail is allowed and the petitioner ordered to be released on bail pending trial subject to his furnishing bail bonds/surety to the satisfaction of the learned trial Court/CJM/Duty Magistrate, concerned provided he is not required in any other case and further subject to his complying with the conditions contained in Section 437 (3) CrPC. It is also made clear that in the eventuality of the petitioner being involved in any other case under the NDPS Act during the period he is on bail in the instant case, the bail granted to the petitioner in the instant case would be liable to cancellation on an application to said effect being moved by the prosecution.

However, nothing stated hereinabove shall be construed to be an expression of opinion on the merits of the case.

March 31, 2021

'Rajneesh/Amit'

(B.S. Walia)

Judge

Whether speaking/ reasoned

:

Yes/No

Whether reportable

:

Yes/No