

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

CRM-M-42701-2020

DATE OF DECISION: 26.03.2021

Khalil Ahmed

.....Petitioner

versus

State of Haryana

.....Respondent

CORAM:- HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. Birinder Singh Khehar, Advocate for the petitioner.

Mr. Rajesh Gaur, Addl. AG Haryana.

ALKA SARIN, J. :

Heard through physical hearing.

This is the second petition filed under Section 439 CrPC for grant of regular bail to the petitioner in case FIR No.254 dated 21.07.2020 under Sections 22 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Sadar Yamuna Nagar, District Yamuna Nagar. The first petition (CRM-M-25532-2020) under Section 439 CrPC was dismissed as withdrawn on 13.10.2020.

The allegations in the FIR are that on 21.07.2020 Sub Inspector Dharam Singh along with other police officials was present at Police Post Kalanaur in connection with patrolling when a secret information was received to the effect that one Shubham is indulging in the selling of intoxicating medicines and that he would be coming to Yamuna Nagar from Shahjanpur side on his motorcycle no.UP-11-AU-9560 having intoxicating capsules and if a nakabandi is done then Shubham could be apprehended red

handed with the illegal intoxicating capsules. Believing the information as correct, Sub Inspector Dharam Singh sent a notice under Section 42 of the NDPS Act to Sushil Kumar, Athletics (Weightlifting) Coach, District Sports and Youth Welfare Department, Yamuna Nagar. The search of the police officials was conducted but nothing was recovered. Thereafter, Sub Inspector Dharam Singh reached the T-Point Kalanaur New Bye-pass, Yamuna Nagar and asked the passersby to join as witnesses but they did not join. A nakabandi was conducted and after some time one young boy on motorcycle came from Shahjanpur side. Sub Inspector Dharam Singh gave him a signal to stop but the motorcyclist tried to turn back the motorcycle. Sub Inspector Dharam Singh with the help of other police officials apprehended the boy who was having one bag on his back and disclosed his name as Shubham. Notice under Section 50 of NDPS Act was prepared and Shubham showed his willingness for search from a Gazetted Officer. Thereafter, Sushil Kumar, Gazetted Officer, was informed and he came there and search of the bag was conducted. From the bag, 16 boxes of SPASMO PROXYVON PLUS containing 6 packets in each box having 24 capsules in each packet, total 96 packets having 2304 capsules, were recovered. The capsules were taken in possession and the weight of the tablets/capsules was 1.410 kilogram. The FIR was lodged.

During investigation, the accused Shubham suffered a disclosure statement that he had purchased the said capsules from Khalil Ahmed, the petitioner. The petitioner was arrested on 04.08.2020.

The counsel for the petitioner has urged that the petitioner has been falsely implicated in the case. Nothing was recovered from the possession of the petitioner and he is not named in the FIR. Learned counsel

for the petitioner has further contended that the name of petitioner has

cropped up only on the basis of the disclosure statement of the accused, Shubham. He has also contended that after the withdrawal of the first petition for regular bail the circumstances have changed as the investigation stands completed and final report under Section 173 CrPC has been presented in Court.

The State has filed a reply dated 13.01.2021 by way of affidavit of Subhash Chand, HPS, Deputy Superintendent of Police, Yamuna Nagar. The reply discloses that the petitioner was arrested on 04.08.2020 after the accused Shubham suffered a disclosure statement on 22.07.2020 that he had purchased the capsules from the petitioner. The petitioner is running a medical hall in Sarsawa and had sold the narcotic medicines to the accused Shubham. According to the reply, the final report under Section 173 CrPC was presented in Court on 16.09.2020 and that there is no other case against the petitioner. There are 17 prosecution witnesses and none has been examined till now. Learned State counsel has also submitted that the petitioner is involved in a serious offence involving commercial quantity of narcotic medicines and also that the petitioner could flee and therefore bail be declined to him. According to learned State counsel there is no change in the circumstances since the withdrawal of the first petition for grant of regular bail.

I have heard counsel for the parties. The petitioner, who runs a medical hall, is accused of selling the narcotic medicines, which are of commercial quantity, to the accused Shubham. The petitioner is behind the bars since 04.08.2020 and there is no other case against him. The charges have been framed against the petitioner and also the accused Shubham and the case is now fixed on 26.03.2021 for the prosecution evidence. There are

In view of the above and without commenting upon the merits of the case and considering the fact that the trial is likely to take some time to conclude especially in view of the prevailing conditions on account of COVID-19 Pandemic and also the fact that the charges have been framed and no recovery is to be made from the petitioner and that the petitioner has been behind bars since 04.08.2020 and there is no other case pending against him, no useful purpose would be served by keeping the petitioner behind the bars any further. This Court, therefore, deems this to be a fit case for grant of regular bail to the petitioner. The petitioner is directed to be released on bail subject to his furnishing bail bonds/surety bonds to the satisfaction of the Illaqa Magistrate/Duty Magistrate/Trial Court concerned.

However, the Prosecution will always be at liberty to apply for cancellation of bail in case the petitioner is found to be misusing the concession of bail in any manner.

It is also made clear that any observation made herein shall not be treated as an expression of opinion on the merits of the case.

Disposed off.

(ALKA SARIN)
JUDGE

26.03.2021
Yogesh Sharma

NOTE:

Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO