

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-49577-2021 (O&M)
Date of decision: 01.12.2021

Salim Khan

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Parvinder Singh, Advocate
for the petitioner.

Mr. Himmat Singh, DAG, Haryana.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for grant of regular bail in FIR No.170 dated 26.08.2020 under Section 22(C)/29/61/85 of NDPS Act, registered at Police Station Dhand, District Kaithal.

Learned counsel for the petitioner has relied upon the order dated 09.11.2021 passed in CRM-M-17527-2021, vide which co-accused Parveen Kumar @ Beena has been granted the concession of regular bail. The operative part of the order reads as under: -

“...Learned counsel for the petitioner submits that the FIR was registered on the basis of a secret information that petitioner Parveen Kumar is in the business of selling narcotic medicines

and he is coming on a motorcycle. On receiving such information, a notice under Section 42 of the NDPS Act was prepared and was sent to the police station concerned and thereafter, the Investigating Officer went to the house of the petitioner in a Govt. vehicle, where the petitioner was seen coming on a motorcycle. He was apprehended on suspicion and thereafter, by giving a notice under Section 50 of the NDPS Act, a Gazetted Officer was called at the spot and recovery of 13740 tablets of Alprazolam and 1950 tablets of Tramadol HCL were recovered.

Learned counsel further submits that the alleged recovery was effected on 26.08.2020, whereas the sample parcel was sent to FSL on 07.09.2020, however, the same was deposited with FSL on 08.09.2020.

Learned counsel further referred to the statement of PW-1 Parveen Kumar, who was handed over the sample parcel by MHC on 07.09.2020 in the morning, whereas he handed over the same to FSL on the next date i.e. 08.09.2020. It is, thus, submitted that there is every possibility of tampering with sample as in the cross examination this witness has admitted that the sample parcel remained in his custody till the time he deposited the same with the FSL on 08.09.2020.

It is further submitted that petitioner is in judicial custody since 26.08.2020.

Learned State counsel submits that out of total 16

prosecution witnesses, 03 witnesses have been examined and the petitioner is not involved in any other case and has no antecedents of involvement in any other case under the NDPS Act.

After hearing learned counsel for the parties, without commenting upon the merits of the case, considering the statement of PW-1 Parveen Kumar, who kept the sample parcel overnight with him on 07.09.2020 and deposited the same with the FSL on the next day i.e. 08.09.2020 and also in view of the fact that even the sample parcel was sent after a delay of about 11 days from the date of alleged recovery which makes the case of prosecution doubtful, the instant petition is allowed. The petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate/Illaq Magistrate, concerned.”

For the sake of brevity, facts are not reproduced again.

Learned counsel for the petitioner submits that in fact, co-accused Parveen Kumar @ Beena named one Naresh Kumar in his disclosure statement and after arrest of Naresh Kumar, name of the petitioner surfaced in his disclosure statement. It is further submitted that on the basis of disclosure statement of co-accused Naresh Kumar, the petitioner was involved in two FIRs on the same day i.e. the present FIR and another FIR No.244 dated 26.08.2020 registered at Police Station Civil Lines, Kaithal.

Learned State counsel, on the basis of custody certificate dated 30.11.2021 filed in the Court today, has not disputed the factual position. It is

also not disputed that no recovery was effected from the petitioner at the spot and he was nominated in the present FIR on the basis of disclosure statement of co-accused Naresh Kumar and even after arrest of the petitioner, no recovery was effected from him. It is, however, submitted that out of total 17 prosecution witnesses, only 06 PWs have been examined.

Without commenting anything on merits of the case, considering the aforesaid facts and circumstances of the case and also in view of the fact that the petitioner is in custody for the last about 01 year and out of total 17 prosecution witnesses, only 06 PWs have been examined so far, this petition is allowed and the petitioner is directed to be released on regular bail subject to furnishing his bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate, concerned.

Petition is disposed of.

[ARVIND SINGH SANGWAN]
JUDGE

01.12.2021
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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No