

In virtual Court

CRM-M-42643-2019

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-42643-2019 (O&M)
Date of decision: 10.08.2021

Surender Singh @ Kaka

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

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

Mr. Chetan Sharma, AAG, Haryana.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for grant of regular bail in FIR No.288 dated 26.07.2019 under Section 22C/61/85 of NDPS Act, registered at Police Station Rania, District Sirsa.

Learned counsel for the petitioner submits that as per allegations in the FIR, the police party, while on patrol duty, apprehended a young man coming on bike, holding a polythene bag in his hand. He tried to turn his motorcycle back, but he lost the balance and polythene bag fell down on the earth and the complainant/Investigating Officer apprehended him and he disclosed his name as Surender Singh @ Kaka (petitioner). Thereafter, search

of the motorcycle and black coloured polythene bag was conducted and recovery of 04 boxes make Ridley Parvorin-spasp Tramadol Batch No.PAR-1912, containing 20 strips each and 10 capsules in each strip, was effected. The petitioner could not produce any licence. Thereafter, the Investigating Officer sought opinion of the doctor regarding nature of contraband recovered and the doctor gave his opinion that these capsules carry narcotic substance and falls under the NDPS Act.

Learned counsel for the petitioner further submits that in fact, 03 FIRs were registered in the same police station. First FIR No.286, which was registered at 9.49 pm, in which one co-accused Des Raj was found in possession of 160 intoxicant capsules and he nominated the petitioner. Similarly, in another FIR No.287, registered after 11 minutes i.e. at 10.00 pm, in which another co-accused Gurdev Singh was found in possession of 790 intoxicant capsules and he also disclosed name of the petitioner. It is also submitted that present FIR No.288 was registered at 11.29 pm showing that the petitioner was carrying contraband himself. It is next submitted that in the earlier two FIRs, the petitioner has already been released on regular bail either by the Court of Sessions or by this Court.

Learned counsel for the petitioner has further submitted that the petitioner, except for three FIRs, which were registered in a quick succession of about one hour and in two cases, he was nominated and in one case, recovery has been shown and he has no previous history of involvement in any NDPS Act. It is also submitted that it will be a matter of trial whether provisions of

Section 42 of NDPS Act were complied with or not, as perusal of the FIR shows that immediately after the petitioner was apprehended with a polythene bag allegedly containing intoxicant capsules, neither any ruqa was sent to the police station nor second Investigating Officer was called and the same Investigating Officer, after apprehending the petitioner, conducted the search and effected the recovery. Thereafter, the information was sent for registration of FIR. It is thus submitted that it will also be a matter of trial whether non-compliance of Section 50 of NDPS Act would have bearing on merits of the case. Learned counsel has lastly argued that the petitioner is in custody for the last 02 years and 13 days and out of total 15 prosecution witnesses, none has been examined till date, though the charges were framed way back in February, 2020.

Learned State counsel has filed the custody certificate dated 09.08.2021 in the Court today and has not disputed the factual position. It is submitted that the petitioner was nominated in FIRs No.286 and 287 on the basis of disclosure statements of aforesaid co-accused and later on, he was granted the concession of regular bail. He also could not dispute that till date, no prosecution witness has been examined and the trial is delayed due to COVID-19 situation in the country.

After hearing learned counsel for the parties, without commenting anything on merits of the case and considering the facts and circumstances of the case and also in view of the fact that the petitioner is in long custody of more than 02 years and charges were framed in February, 2020 and till date, no

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prosecution witness has been examined, 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

10.08.2021
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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No