

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

203

CRM-M-48572-2019

Date of Decision : July 06, 2021

HANISH KUMAR

.....Petitioner

VERSUS

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present : Mr. M.K.Dhot, Advocate
for the petitioner.

Mr. Randhir Singh Thind, DAG, Punjab.

Through Video Conferencing

JASGURPREET SINGH PURI. J. (Oral)

The present petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No.255 dated 8.10.2018 under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station Bhawanigarh, District Sangrur.

Learned counsel for the petitioner at the outset has submitted that the petitioner is on parity with the other similarly situated co-accused namely Jacky Garg, who has been granted regular bail by this Court on 22.04.2021 in CRM-M-24849 of 2020. He has submitted that as per the allegations contained in the FIR, when the police party received an information that some suspicious persons were coming from main road towards Nidampur and when the police reached near Fauji Dhaba, they saw three persons sitting near a motorcycle who got perplexed and on

seeing the police and tried to run away. They were apprehended with the help of fellow police officials and the injections which were recovered were clearly visible in the polythene bag, which were kept under the seat of motorcycle and when they were counted they came to be 47 injections of Buprenorphine and 47 injections of Promethazine Hydrochloride injections of 25 mg/ml. It was further submitted by the learned counsel for the petitioner that the petitioner is in custody since 8.10.2018, which is more than two years and six months and the prosecution evidence in the present case is already complete. He has further submitted that the provisions of Section 50 of the NDPS Act were not complied with in the present case particularly in view of the fact that even assumingly it was a case of commercial quantity which was recovered from the bag of the other co-accused and, therefore, the provisions of Section 50 of the NDPS Act ought to have been complied with and the Gazetted officer was not called in the present case.

On the other hand, Mr. Thind, learned DAG Punjab has not disputed the custody of the petitioner. He has also not disputed that the petitioner is on parity with the other co-accused namely Jacky Garg. Further, he has raised the plea of bar of Section 37 of the NDPS Act.

I have heard the learned counsels for the parties.

Custody period of the petitioner is not in dispute. The prosecution evidence in the present case is already complete and now the matter is pending for defence evidence for long time. So far as the bar contained under Section 37 of the NDPS Act is concerned, the learned counsel for the petitioner has submitted that since the recovery was from

the person of the other co-accused, the provisions of Section 50 of the NDPS Act ought to have been complied with. However, learned State counsel has submitted that the recovery was from the seat of the motorcycle but one syringe and one injection was recovered from the person of the other co-accused and, therefore, the provisions of Section 50 of the NDPS Act was not mandatory.

In the present case, it is an admitted position that no Gazetted Officer was called even though recovery of syringe and injection was made from the person of co-accused and contraband from seat of motorcycle and, therefore, it constitutes a prima facie ground for presuming at this stage with regard to the role of the petitioner that he may not be guilty in view of violation of Section 50 of the NDPS Act. Consequently, in the present case a departure can always be made under Section 37 of the NDPS Act.

Further more it is not the case of the State that in case the petitioner is released on bail then he may influence any witness or may tamper evidence or may flee from justice.

In view of the above and without commenting upon the merits and circumstances of the present case, the present petition is allowed. The petitioner is ordered to be released on bail on furnishing of bail bonds and surety bonds to the satisfaction of concerned Chief Judicial Magistrate/Duty Magistrate.

July 06, 2021
ajay-1

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No