

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-1546-2022 (O&M)

Date of decision: 07.07.2022

Kundan Thakur

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. R.K. Lathwal, Advocate and
Mr. Man Mohit Malik, 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.388 dated 17.07.2021 under Section 20 of NDPS Act (Sections 25, 27-A, 29 of NDPS Act and Section 201 IPC were added later on), registered at Police Station Sampla, District Rohtak.

Learned counsel for the petitioner, at the very outset, relies upon the order dated 15.02.2022 passed in CRM-M-5555-2022, vide which co-accused Manoj Kumar was granted the concession of regular bail, by passing the following order: -

“...Learned counsel for the petitioner submits that as per allegations in the FIR, the police party headed by ASI Satpal was on patrol duty and a secret information was received that Kundan

Thakur and Manoj Kumar (petitioner) are coming on a motorcycle carrying some narcotic substance. On this, ruqa was sent to the police station under Section 42 of NDPS Act and a barricade was laid and after some time, two persons were seen coming on a motorcycle. On seeing the police party, they tried to turn back, but the motorcycle slipped on the road. Driver of the motorcycle ran towards the fields and was nabbed by the police party, carrying a black coloured bag. On enquiry, he disclosed his name as Kundan Thakur and disclosed the name of other person as Manoj Kumar, who ran away. After conducting the search, from Kundan Thakur, recovery of 1 kg 350 grams of charas was effected.

Learned counsel for the petitioner has further submitted that the petitioner is first offender; he is in custody for the last 06 months; investigation is complete and neither he was arrested at the spot nor after his arrest, any contraband was recovered from him; charges were framed on 25.10.2021 and out of total 16 prosecution witnesses, none has been examined...”

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

Learned counsel submits that as per allegations in the FIR, the petitioner was apprehended at the spot and later on, vide DD No.28, notice under Section 42 of NDPS Act was sent to the police station for registration of FIR and information was sent to a Gazetted Officer. Thereafter, a notice under Section 50 of NDPS Act was given to the petitioner and after taking his consent, a Gazetted Officer was called at the spot and in his presence, search of the plastic bag was conducted and recovery of aforesaid contraband was effected.

Learned counsel further submits that in the recovery memo of charas, the Gazetted Officer has only attested the same and has not signed as a witness, therefore, it will be a matter of trial whether attestation was made at the

spot or not, which have a direct bearing on merits of the case, as complete details of the FIR were already mentioned in the recovery memo. It is also submitted that the petitioner is in custody for the last about 01 year; he is first offender and is not involved in any other case.

Learned State counsel has filed the custody certificate in the Court today and has not disputed the factual position, however, it is submitted that out of total 13 prosecution witnesses, only 01 PW has been examined so far. As per the custody certificate, the petitioner is in custody for the last 11 months and 18 days and is not involved in any other case.

After hearing learned counsel for the parties, without commenting anything on merits of the case and considering the aforesaid facts and circumstances of the case, 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

07.07.2022
vishnu

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No