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

CRM-M-3183-2022

Date of decision: 14.02.2022

BALWINDER SINGH ALIAS BINDER

...Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Abhishek Khullar, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN, J. (Oral)

This is the third petition filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No. 0260 dated 13.12.2019, registered under Sections 22 and 25 of the NDPS Act at Police Station City Jagraon, District Ludhiana.

The earlier two petitioners bearing CRM-M-Nos.8302-2020 and 3731-2021, were dismissed vide orders dated 24.09.2020 and 08.09.2021 respectively.

Learned counsel for the petitioner at the very outset submits that the petitioner is the first offender and is in judicial custody for the last about 02 years and 02 months and further submits that even the charges have not been framed and it will take a long time in conclusion of the trial.

Learned counsel for the petitioner further relies upon the order dated 10.01.2022 passed in CRM-M-8981-2020, vide which the regular bail was given to the co-accused namely Mangal Singh, who was on interim regular bail.

The operative part of the order reads as under:-

“....Learned counsel for the petitioner submits that the FIR was registered at the instance of ASI Janak Raj that he has received a secret information that Balwinder @ Binder and Mangal Singh (petitioner) are indulge in selling intoxicant tablets and they are coming in a car for supplying intoxicant tablets to their customers.

A Ruqa was sent to the police station and the FIR was registered, thereafter, ASI Chamkaur Singh was deputed to conduct the investigation.

A barrier was laid and a car bearing registration No.PB03W-0466 was stopped, in which there were two persons. The driver informed his name as Balwinder Singh @ Binder and he was given a notice under Section 50 of the NDPS Act. Similarly, the petitioner, who was the other occupant of the car was also given an option.

Learned counsel for the petitioner submits that it is further case of the prosecution that about 15000 tablets of Tramadol Hydrochloride of six different lots were recovered. Learned counsel for the petitioner has relied upon the report under Section 173 Cr.P.C. to submit that no sample parcel was drawn at the spot and the accused persons were produced before the Sub Divisional Judicial Magistrate, Jagraon, where the application was moved for preparing the inventory of the case property and the sample parcel were drawn as Marks A-1, B-1, C-1, D-1, E1 and F-1.

Learned counsel for the petitioner further submits that though the Magistrate on 14.12.2019 directed the SHO to send the sample parcels to the concerned laboratory and the remaining parcels be retained in the judicial Malkhana at Ludhiana. However, the sample parcels were sent to FSL, Ludhiana on 12.02.2020 as per the FSL report dated 21.05.2020. He further submits that during the investigation, the statement of a lady constable, namely, Kulveer Kaur was recorded under Section 161 Cr.P.C. in which she has stated that on 21.12.2019 constable Manjinder Singh took out the sample parcels from the Malkhana and handed over to her with a direction to get the docket issued from the Office of Senior Superintendent of Police, Ludhiana (Rural) and after getting the docket issued from the office of Senior Superintendent of Police, Ludhiana (Rural), she deposited the same along with the sample parcels with constable Manjinder Singh, in-charge of the Malkhana. Again on 24.01.2020 constable Harjinder Singh took out the docket dated 21.12.2019 along with the sample parcels and handed over to her to deposit in FSL, Ludhiana. However, FSL Ludhiana, raised an objection over the dockets with sample Mark A-1 to F-1 and she again deposited the docket back with

constable Manjinder Singh. Thereafter, on 12.02.2020, again constable Manjinder Singh took out the docket and handed over to her for depositing the same in FSL, Ludhiana and it was deposited with FSL, Ludhiana on the same day.

Learned counsel for the petitioner further submits that it raises a suspicion the manner in which, the dockets were taken out from the Malkhana, re-deposited again taken out and again redeposited and then after two months they were deposited in the FSL.

Learned State counsel seeks some time to file an affidavit of the Senior Superintendent of Police, Ludhiana (Rural) about the manner the samples were dealt with by the concerned police officials.

Considering the fact that the petitioner is in long custody of 1 year and 8 months and not involved in any other case and despite the fact that the challan was presented before the trial Court in June, 2020. However, even after passing of one year charges have not been framed, the petitioner is directed to release on interim bail, till the next date of hearing on furnishing bail/surety bonds to the satisfaction of trial Court/Illaq Magistrate.

List on 22.11.2021.

Affidavit be filed before the next date of hearing....”

Again, on a direction given to the Superintendent of Police, to file a specific reply, affidavit of the Senior Superintendent of Police, District Ludhiana (Rural) is on record and as per the reply, the departmental action has been taken against the erring police official, who kept the sample parcel for a period of 02 months and did not move appropriate application before the Illaq Magistrate and the Deputy Superintendent of Police, PBI/NDPS, Ludhiana (Rural) is appointed as an Enquiry Officer.

Counsel for the petitioner has submitted that, in pursuance to the order dated 25.08.2021, the petitioner has appeared before the trial Court and he has been released on interim bail.

Learned counsel for the petitioner further submits that as per the affidavit of the Senior Superintendent of Police, Ludhiana (Rural), a departmental action has been taken against the erring police officials, who have failed to send the sample parcel for a period of two months and an Inquiry Officer has been appointed in this regard.

Learned State counsel has not disputed the factual position and has filed the custody certificate in Court today and as per the same,

petitioner is in judicial custody for the last about 02 years, 01 month and 25 days and is not involved in any other case.

I have heard learned counsel for the parties.

Without commenting upon the merits of the case, considering the submissions made by learned counsel for the parties; 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/Illaqa Magistrate, concerned.

14.02.2022
Chetan Thakur

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No