

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(103)

CRM-M No.3908 of 2022

Date of Decision : 01.02.2022

Surinder Kumar

...Petitioner

Versus

State of Punjab

....Respondent

CORAM : HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Amandeep Singh Manaise, Advocate,
for the petitioner.

AMOL RATTAN SINGH, J. (Oral)

Case heard by way of video conferencing.

This is the second petition filed by the petitioner, seeking to be admitted to bail under the provisions of Section 438 Cr.P.C., upon FIR No.69, dated 11.07.2020, having been registered at Police Station Behrampur, District Gurdaspur, alleging therein the commission of offences punishable under the provisions of Sections 22, 21 and 29 of the NDPS Act, 1985.

In the first such petition filed by him, bearing CRM-M No.25148 of 2020, the following order had been passed by this Court on 31.08.2020:-

“All cases listed today have been taken up for hearing by way of video conferencing because of the situation existing due to the COVID-19 pandemic.

Learned counsel for the petitioner submits

that no prohibited drug under the provisions of the NDPS Act, 1985, is actually shown to have been recovered even from the co-accused of the petitioner, i.e. his wife Anjali @ Jeeti, with the only description of the tablets allegedly recovered (as per the case of the investigating agency), being that they were "Redlay brand capsules", 576 in number, with the chemical examiners' report still to be received as to what they contained.

He submits that in any case the petitioner has been allegedly named on a disclosure statement made by his aforesaid co-accused.

Notice of motion.

Mr. Harbir Sandhu, learned AAG, Punjab, accepts notice at the asking of the court.

Adjourned to 01.12.2020.

In the aforesaid circumstances, the petitioner is directed to join investigation and upon him so joining if he is sought to be arrested, he would be released on bail, on his furnishing adequate bail and surety bonds to the satisfaction of the arresting officer/Ilaqa Magistrate.

He shall, further, abide by all the conditions stipulated in Section 438 (2) of the Cr.P.C.

If the arresting officer does not join the petitioner in investigation, he would appear before the learned Ilaqa Magistrate immediately, who would then summon the arresting officer and direct him to join him in investigation.

A copy of the chemical examiners' report be also placed on record in the reply to be filed by a

gazetted officer by the next date of hearing.

It is to be also noticed that upon query to learned State counsel, he submits that, as per his instructions, there is no other criminal case registered against the petitioner.”

Thereafter, that petition was disposed of on 01.12.2020 with learned State counsel appearing at that stage having taken instructions from the Investigating Officer (SI Harjeet Singh) to the effect that the petitioner had joined investigation and his custodial interrogation at that stage at least was not required.

Learned counsel for the petitioner today submits that the order dated 31.08.2020 not having been made absolute by this Court and that petition having been disposed of as having been rendered infructuous, the trial court now, upon the report under Section 173 Cr.PC having been submitted, is not taking the petitioner to have been admitted to bail by this Court and consequently, this petition has come to be filed.

Notice of motion.

Mr. Sidakmeet Singh Sandhu, learned AAG, Punjab, accepts notice on behalf of respondent-State, at the asking of the Court. He submits that as per his instructions, with the challan also now having been submitted to the court and in any case the petitioner's custodial interrogation not having been required more than two years ago, it is not required now.

That being so, this petition is allowed with the petitioner ordered to be admitted to bail, to the satisfaction of the trial Court.

It is to be noticed that even in terms of Section 37 of the NDPS Act, 1985, bail in a case where commercial quantity is alleged to have been recovered from an accused, cannot be granted if the public prosecutor

opposes the said application/petition.

In the present case, learned State counsel having taken instructions at that stage as also this stage, from the investigating officer himself, that the petitioner's custodial interrogation is not required, obviously the bar contained in the said provision would not operate.

01.02.2022

Shivani Kaushik

(AMOL RATTAN SINGH)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No