

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

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CRM-M-6101-2022

Date of Decision: 26.04.2022

Harkirat Singh @ Harry

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE LALIT BATRA

Present: Mr. Ashish Soi, Advocate for petitioner.

Mr. Rana Harjasdeep Singh, Deputy Advocate General, Punjab.

Lalit Batra, J.(Oral)

Present second petition under Section 439 Cr.P.C has been moved by petitioner-**Harkirat Singh @ Harry** for grant of regular bail in case FIR No.103 dated 27.07.2019 under Section 22 of NDPS Act, registered at Police Station Sadar Ludhiana, District Police Commissionerate Ludhiana.

Status report dated 26.04.2022 by way of affidavit of Deep Kamal, PPS, Assistant Commissioner of Police (South), Ludhiana, along with Annexure R/1 (FSL report) filed today in the Court by respondent-State, is taken on record and copy thereof has been supplied to learned counsel for petitioner.

Learned counsel for the petitioner *inter alia* contends that allegations levelled against the petitioner are altogether false and frivolous and there is no iota of truth therein. He further submits that allegedly

contraband (intoxicant power “Diphenoxylate Hydrochloride” weighing 52 grams) was recovered from the petitioner, whereas petitioner has no nexus whatsoever with the contraband. He further urges that in terms of status report dated 26.04.2022, as detailed above, contraband was weighed on the computerized weighing scale and the weight of contraband inclusive of polythene bag came to 52 grams. He further urges that weight of polythene bag may vary from 02 to 05 grams and in that eventuality, actual weight of contraband shown to be 52 grams may vary and as such alleged recovery of contraband would be less than 50 grams, which is “non-commercial quantity”. He further urges that sub-clause (viia) of Section 2 of NDPS Act defines the term “commercial quantity” in relation to narcotic drugs and psychotropic substances, means any quantity greater than the quantity specified by the Central Government by Notification in the Official Gazette. He further urges that in terms of Serial No.44 of the Table attached to the NDPS Act when read in consonance with sub-clause (viia) of Section 2 of NDPS Act, 'Diphenoxylate' weighing upto 50 grams is to be termed as “non-commercial quantity” and as such alleged contraband is to be categorized as “non-commercial quantity”. He further submits that petitioner is not involved in any other case FIR except instant one. He further submits that petitioner is languishing in custody since 27.07.2019 and he is no more required by the Police for any investigation purpose as after completion of investigation, final report under Section 173 Cr.P.C. (*Challan*) has already been presented in Court and trial has commenced. He further urges that since trial of the case would take sufficient time to conclude, no useful purpose

would be served by keeping the petitioner in custody further and he may be released on bail.

On the other hand, learned State counsel while opposing instant petition has vehemently argued that keeping in view seriousness of offence, petitioner does not deserve the concession of bail.

I have heard learned counsel for the parties and have carefully gone through the contents of petition.

At this stage, without commenting anything on the merits of the case lest it may prejudice the outcome of the trial but taking into consideration the fact that petitioner is in custody since 27.07.2019; that petitioner is no more required by the Investigating Agency for investigation purpose; that *Challan* has already been presented in Court and since trial of the case would take sufficient time to conclude, no useful purpose would be served by detaining the petitioner in custody further, thus, he deserves the concession of bail.

In view of above, instant petition for grant of regular bail moved by petitioner-**Harkirat Singh @ Harry** is allowed and he is ordered to be released on bail on his furnishing personal/surety bonds to the satisfaction of Trial Court/ Chief Judicial Magistrate/Duty Magistrate, Ludhiana, as the case may be.

(LALIT BATRA)
JUDGE

26.04.2022

Varinder Prashad