

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

212

**CRM-M-8931-2022
Date of decision: 17.05.2022**

YOGESH KUMAR @ RINKU

....Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present : Mr. Arihant Jain, Advocate
for the petitioner.

Mr. Gaurav Garg Dhuriwala, Sr. DAG, Punjab.

VINOD S. BHARDWAJ. J. (ORAL)

The present petition has been filed by the petitioner under Section 439 Cr.P.C. seeking for grant of regular bail in case FIR No. 95 dated 25.02.2020 registered under Sections 22 and 25 and 29 of the Narcotics Drugs and Psychotropic Substances Act, 1985 and Sections 467, 468, 471 and 120-B of the Indian Penal Code, 1860 at Police Station City Barnala, District Barnala.

2. The present case has been registered on the basis of secret information to the effect that Mohal Lal @ Kala son of Pawan Kumar is habitual of bringing huge quantity of intoxicant tablets for supply in District Barnala and the adjacent areas. In case, a Nakabandi is conducted, a huge quantity of intoxicant substances can be recovered. The information being credible, the same was reduced in writing and the named accused Mohan Lal @ Kala was eventually arrested leading to a recovery of 80 strips of Alprasafe and 120 strips of Etolam

containing 10 tablets each -total 2000 tablets. Upon his disclosure he nominated one Naresh Mittal who was thereafter arrested on 28.02.2020. A total of 4900 intoxicant tablets were recovered from Naresh Mittal on 28.02.2020. Further, 80 strips of Clovidol, 1000 loose tablets, cash amount of Rs. 05 lacs and one Innova Car were also recovered on 01.03.2020. The said Naresh Mittal further nominated four other persons namely Rupesh Kumar, Prem Kumar, Hardeep Kumar and Ishu Kumar who were also arrested. That on 16.03.2021, the Police arrested Imran from whose's possession Rs.16 lacs as drug money is claimed to have recovered. Further 1,75,000 intoxicant tablets & 300 clean kits were recovered at the disclosure of Imran. The name of the petitioner was arraigned as an accused in the disclosure statement of Imran. The petitioner was thereafter brought on production warrants after seeking orders from the Court. However, no recovery of any nature was effected at the disclosure of the petitioner.

3. Learned counsel appearing on behalf of the petitioner contends that the petitioner has been falsely implicated in the said FIR and that the petitioner was already in custody in case FIR 09 registered under Sections 21 and 22 of the NDPS Act at Jaipur in the year 2020 and he was brought on production warrant from Jodhpur. He further submits that there is no role attributed or allegations against the petitioner in the present FIR and that even though the petitioner was nominated on the statement of Imran, however, no recovery of any nature whatsoever has been effected at the instance or at the behest of the petitioner. He further contends that the investigation in this case is complete and that other similarly accused persons namely Balwinder

Kumar @ Kalu have been granted the concession of regular bail in case bearing CRM-M-13093 of 2020 vide judgment dated 15.07.2020. He further contends that the other co-accused namely Akashdeep Sharma @ Kala has also been granted a similar concession vide judgment dated 13.08.2020 passed in CRM-M-16417 of 2020. The co-accused namely Prem Kumar @ Neeta was also granted the same concession vide judgment dated 17.08.2020 in CRM-M- 20703 of 2020. Thus, he contends that the case of the petitioner would be at par with the other accused to whom the concession of bail has already been granted. It is also argued that the petitioner was taken in custody on 22.03.2021 and has already undergone a custody of nearly 01 year and 02 months. It is pointed out that there are about 100 prosecution witnesses to be examined. The charge has been framed, however, no prosecution evidence has been examined so far. It is further submitted that the petitioner has not been specified any specific role in commission of offence except for the alleged disclosure of co-accused which is inadmissible in evidence against the petitioner. The same is at best an evidence against co-accused Imran from whom recovery has been effected pursuant to the disclosure. Thus the prosecution of the disclosure under Section 27 of the Evidence Act is only to the extent of fact discovered. Despite conclusion of investigation, only general involvement of petitioner is alleged which is not corroborated in any particulars.

4. Mr. Gaurav Garg Dhuriwala, Sr. DAG, Punjab has contended that the petitioner is a part of a large gang which is engaged in supply of intoxicant tablets, capsules and vials throughout the State

of Punjab and other territories of the Country. It is submitted that the raid was conducted on the basis of Secret information, where the other co-accused Mohal Lal @ Kaka was arrested. It is pointed out that huge quantity of about 45 lakh intoxicant tablets was effected from the co-accused persons. He further contends that the petitioner had also submitted an application for being taken in as an approver before the Judge, Special Court and the same itself shows that the petitioner had accepted his participation and role in the commission of the offence.

5. Learned counsel appearing on behalf of the State however could not deny the fact that no recovery was effect from the petitioner and the entire recovery was made from the other co-accused persons and that similarly placed co-accused persons have already been granted concession of bail. The only point of distinction being that the petitioner had moved an application for turning approver vis-a-vis. the other persons to whom the concession had been extended by this Court.

6. Learned counsel appearing on behalf of the petitioner submits that the said application so moved was not pressed and dismissed as such. There is nothing to controvert the said statement of fact pressed by the counsel for the petitioner. He further contends that the application itself is not an admission of guilt and in any case the evidentiary value of such an application and the import thereof can only be ascertained at the time of trial. The same would not however, put the petitioner on any separate pedestal than the other accused involved in the instant FIR to whom similar role has been attributed during the investigation. On parity, the Court cannot be prejudiced against the petitioner as compared to the other accused persons. Even the said

application seeking to turn as an approver, upon consideration, shows that the petitioner had pointed out the involvement of co-accused Imran and had stated at one point that Imran has asked him to work for him for money. There is nothing stated in the said application for becoming an approver that the petitioner had facilitated the commission of any offence or made any disclosure that led to a discovery of any new fact. The said application does not given any averment against the petitioner. Be that as it may, the probative value of the said application is to be ascertained at the time of trial.

7. I have heard learned counsel appearing on behalf of the respective parties and have gone through the record with their assistance.

8. Taking into consideration the period of actual custody already undergone by the petitioner, the stage of trial, the status of investigation and the evidence relied upon by the prosecution against the petitioner and in the absence of any distinguishing feature as to why the concession of parity should not be extended to the petitioner with the other co-accused to whom such concession has already been extended, I deem it appropriate to enlarge the petitioner on bail to the satisfaction of the trial Court.

9. The instant petition is allowed and the petitioner is ordered to be released on bail on his furnishing requisite bail bond/surety bond to the satisfaction of the Trial Court/Duty Magistrate, concerned.

10. It is made clear that the petitioner shall not extend any threat and shall not influence any prosecution witnesses in any manner directly or indirectly.

11. The observations made hereinabove shall not be construed as an expression on the merits of the case and the trial Court shall decide the case on the basis of available material.

The petition is allowed.

(VINOD S. BHARDWAJ)
JUDGE

MAY 17, 2022

<i>vishal sharma</i>	<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
	<i>Whether reportable</i>	:	<i>Yes/No</i>