

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-10021-2022(O&M)

Date of decision : 21.11.2022

Ashok Kumar

... Petitioner

Versus

State of Haryana

... Respondents

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Rajbir Singh, Advocate
for the petitioner.

Mr.Praveen Bhadu, AAG, Haryana.

VIKAS BAHL, J.(ORAL)

This is a second petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR no.132 dated 22.04.2021 registered under Section 21(c)/61/85 of the Narcotic Drugs and Psychotropic Substances Act 1985 (in short “NDPS Act”) at Police Station Sirsa Sadar, District Sirsa.

Brief facts of the present case are that the present case was registered on the complaint of SI Rakesh Kumar who had stated that he along with other police officials, carrying a personal laptop and a printer, was present at the bus stop village Bhamboor in connection with searching for criminals and to stop smuggling of intoxicant substances, on a government vehicle when a special informer informed that the present petitioner and co-accused Gurwinder Singh, both residents of village Talwara Jheel, Rajasthan, were engaged in the work of smuggling smack

0740 make Hero Splender Plus of black colour for selling smack and in case nakabandi was laid down at village Chkrayian, they can be apprehended with heavy quantity of smack. After the said information was received, the police officials prepared a notice under Section 42 of the NDPS Act and the same was sent to DSP, Sirsa through HC Prem Kumar and the complainant, along with other police officials, reached at T point bypass Khaireka road village Chakrayian and barricade the same and about half an hour later, they saw the motor cycle in question coming towards them and they asked them to stop the same and thereafter apprehended the driver and the pillion rider and the driver disclosed his named as Gurwinder Singh whereas the pillion rider disclosed his name as Ashok Kumar (present petitioner) and notice under Section 50 of the NDPS Act was served upon them and the search was carried out by the gazetted officer Sh.Mahinder Singh, SDO, Irrigation Department, Division Dabwali, in accordance with law and from the personal search of the petitioner, 270 grams of smack were recovered and even from the personal search of the co-accused Gurwinder Singh, 270 grams of smack was recovered. The total recovery effected from both the accused persons was 540 grams of smack i.e., 270 grams each from the petitioner and co-accused. The commercial quantity of smack starts from 250 grams, and thus, the recovery, whether taken as an aggregate or individually would fall within the definition of the commercial quantity and the bar under Section 37 of the NDPS Act would apply in both the scenarios.

Learned counsel for the petitioner has submitted that the petitioner was arrested on 22.04.2021 and thereafter released on interim bail on 25.08.2021 and thereafter was again in custody from 28.10.2021 and has

submitted that the total period of incarceration undergone by the petitioner is of 1 year 4 months and 25 days. Learned counsel for the petitioner has referred to the order dated 10.01.2022 passed by this Court in the case of co-accused Gurwinder Singh vide which said Gurwinder Singh had withdrawn the case and the Court had directed that the trial Court would expeditiously proceed with the trial. It is submitted that although, after the passing of the order dated 10.01.2022 out of 16 witnesses, 12 witnesses have been examined and one has been given up, but the prosecution has moved an application under Section 311 Cr.P.C. which is listed for arguments today and in view of moving of said application, the trial is not likely to conclude in near future, thus, entitling the present petitioner to grant of regular bail.

Learned State counsel, on the other hand, has opposed the present petition for regular bail and has submitted that in the present case since the recovery from the petitioner as well as co-accused is of commercial quantity, thus, the bar under Section 37 of the NDPS Act would apply and no plea has been raised in order to overcome the said bar. It is further submitted that even the custody period of the petitioner is not such that he could be granted the concession of regular bail on the said consideration. It is also argued that after passing of the order dated 10.01.2022 in the case of co-accused Gurwinder Sijngh, all the witnesses have either been examined or have been given up and thus, the trial is at the fag end.

This Court has heard learned counsel for the parties and has perused the paper book.

A perusal of the FIR would show that the recovery effected

from the present petitioner was of commercial quantity, irrespective of whether the recovery is taken to be joint recovery effected from both the accused persons i.e., 540 grams of smack or is taken individually i.e. 270 grams as had been effected from the petitioner inasmuch as, the stipulated commercial quantity starts from 250 grams and the bar under Section 37 of the NDPS Act would thus, apply. No plea has been raised to overcome the said bar of Section 37 of the NDPS Act. The custody undergone by the petitioner is of 1 year 4 months and 25 days and the same is not such so as to entitle the petitioner to grant of regular bail moreso when as per the stand of the State, the trial at the fag end. Reliance sought to be placed upon the order dated 10.01.2022 passed by this Court in the regular bail application of co-accused Gurwinder Singh vide which it was ordered that the trial be disposed of expeditiously would not further the case of the petitioner inasmuch as it is the stand of the State that all the 16 witnesses have either been examined or have been given up and thus, the trial is at the fag end. Even if the plea raised by learned counsel for the petitioner to the effect that 12 witnesses have been examined and one has been given up, is taken to be true, then also it is apparent that after passing of the order dated 10.01.2022, the trial Court has moved at a good pace and the trial is now at the fag end and although, the application under Section 311 Cr.P.C. has been filed, but however, no order passed in the said application has been brought to the notice of this Court and thus, it cannot be presumed that the proceedings would be inordinately delayed on the said account.

Keeping in view the above said facts and circumstances, the present petitioner does not deserve the concession of regular bail and accordingly, the present petition is dismissed, at this stage.

Nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

Pending miscellaneous application stands disposed of in view of the abovesaid order.

(VIKAS BAHL)
JUDGE

November 21, 2022
Davinder Kumar

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No