

222

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

CRM-M No.10324 of 2022 (O&M)

Date of decision: 06.07.2022

Harminder Singh @ Nikka

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. M.K. Bali, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN J. (Oral)

Prayer in this petition is for grant of regular bail to the petitioner under Section 439 of the Code of Criminal Procedure (in short 'Cr.P.C.') in FIR No.58 dated 24.04.2021, registered under Sections 22(c)/25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') (charges framed under Sections 21(c)/29 of the NDPS Act) at Police Station Nathana, District Bathinda.

Counsel for the petitioner has argued that the FIR was registered on the statement of one ASI Krishan Singh that while on petrol duty, 02 persons were seen coming on a motorcycle, who on seeing, the police party slowed down the motorcycle and tried to turn the same back and in that process, a plastic carry bag kept in between the motorcycle riders fell down and the motorcycle stopped. Both the motorcycle riders were apprehended and disclosed their names as Gursewak Singh @ Babbu, who was driving the motorcycle and the

pillion rider, who was a person having disabled legs, told his name as Harminder Singh @ Nikka. Thereafter, on suspicion that both the persons are carrying some narcotic substance, a telephonic information was sent to the Police Station to depute a competent officer and SI Gurdeep Singh reached at the spot and gave a notice under Section 50 of the NDPS Act, giving an option to be searched before the Gazetted Officer or the Magistrate, but both the persons i.e. the petitioner and his co-accused repose confidence on the same Investigating Officer and later on, on the basis of the same, he searched the bag and recovered 2500 tablets of TRAMADOL HYDROCHLORIDE.

Counsel for the petitioner has, thus, submitted that it will be a matter of trial, whether the search conducted by the same Investigating Officer would amount to a legal procedure adopted under Section 50 of the NDPS Act. It is further argued that the petitioner is having 75% disability and he is not involved in any other case and is in custody for the last 01 year, 02 months and 06 days. Lastly, it is submitted that out of 23 PWs, no PW has been examined, so far.

Counsel for the State has filed the affidavit of the Superintendent, Central Jail, Bathinda, along with the certificate of the Civil Surgeon, Bathinda, in which regarding the disability of the petitioner, the following report is made:-

"In reference to the above mentioned subject and reference, it is submitted that the disability certificate no.PB 1210619930117542 dated 23.03.2021 attached with this letter has been issued to Harminder Singh @ Nikka r/o Chakk Fateh Singh Wala, Distt. Bathinda, whose disability percentage is 75% has been issued by Medical

Authority Office, Civil Surgeon, Bathinda. This is correct as per record."

Lastly, counsel for the State on the basis of the Custody Certificate has not disputed the factual position but opposed the prayer for bail.

Without commenting anything on merits of the case, considering the fact that the petitioner is in custody for the last 01 year, 02 months and 06 days; the petitioner is not involved in any other case; the petitioner is having 75% disability; the custodial interrogation of the petitioner is not required and the conclusion of the trial will take some time, this petition is allowed and the petitioner is directed to be released on bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate.

However, it will be open for the prosecution to apply for cancellation of bail of the petitioner, in case he is found involved in any other case or misusing the concession of bail, in any manner.

(ARVIND SINGH SANGWAN)
JUDGE

06.07.2022

yakub

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No