

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-22731-2022 (O & M)

Date of decision: 12.12.2022

Shankar Kumar

.... Petitioner

V/s

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Manish Soni, Advocate,
for Mr. Pankaj Mahavir, Advocate, for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 439 Cr.P.C. is for the grant of regular bail to the petitioner in case FIR No.439 dated 07.12.2021 under Sections 20b(ii), C, 27A, 23C, 25 and 29 of the NDPS Act, registered at Police Station Sector 6, Bahadurgarh, District Jhajjar.

2. The brief facts of the case are that the police party received secret information that Jasmer Singh son of Satbir and Shankar Kumar (petitioner) son of Ramesh Kumar were travelling in a Silver coloured Innova car bearing No.PB 11 N 5051 and carrying narcotic drug 'Sulfa' which they intended to sell at Beri. If a *nakabandi* was carried out, they could be nabbed with the contraband.

Based on the above allegation, after complying with the provisions of Section 42 of the NDPS Act, a *naka* was laid. After some time, a car came from Bahadurgarh side going towards Beri Road, PDM

the same was signalled to stop. Two persons were sitting in the car and when asked their names, the person driving the vehicle stated his named to be Shankar Kumar (petitioner) son of Ramesh Kumar and the other person sitting on the conductor seat stated his name to be Jasmer Singh son of Satbir Singh. After complying with the provisions of Section 50 of the NDPS Act, the search was conducted and upon the search of Shankar Kumar, no contraband was recovered, though, his driving licence and RC, etc. were recovered. From the search of Jasmer Singh, his ATM card and phone were recovered. When the search of the car was conducted, from underneath the conductor seat, an army coloured bag was recovered and on opening, a white coloured polythene bag was found. On checking the same, it appeared to be 'Sulfa'. On weighing, the quantity of the recovered contraband was found to be 6 kgs. 600 grams.

Thereafter, the present FIR came to be registered.

3. The learned counsel for the petitioner contends that the petitioner was employed as a driver with the owner of the Innova car, namely, Adesh Kumar son of Devi Chand, resident of Patiala. The owner of the vehicle had called up the petitioner and instructed him to drop the co-accused Jasmer, who was known only to the owner in the State of Punjab. The petitioner was working at the commands of his employer and went to drop the co-accused in the State of Punjab. He being a driver could not have possibly checked the contents of the bag carried by his co-passenger. Therefore, he could not be said to be in conscious possession of the recovered contraband. The petitioner was arrested on 07.12.2021 and the challan already stood presented. The petitioner is a first-time offender with no other case registered against him. None of the 18 prosecution witnesses

have been examined so far, and therefore, the further incarceration of the petitioner is not required.

4. The learned counsel for the State has filed a reply dated 02.12.2022 and contends that the petitioner was the driver of the offending vehicle and the recovery was effected from underneath the conductor seat on which Jasmer Singh, co-accused was sitting. He contends that the search and seizure took place after complying with the provisions of the Act. The recovery effected from the vehicle was of commercial quantity of contraband. In terms of the judgment in 'Union of India through Narcotics Control Bureau, Lucknow versus Md. Nawaz Khan, 2021 AIR (SC) 4476', the petitioner did not deserve the concession of bail. He, however, does not dispute the fact that the petitioner is a first-time offender, he is in custody since 07.12.2021 and no prosecution witness has been examined so far.

5. I have heard the learned counsel for the parties at length.

6. Admittedly, the petitioner was a driver of the vehicle, the owner of which is Adesh Kumar. As per the petitioner, he was instructed by Adesh Kumar to pick up his co-accused Jasmer and drop him to Punjab. Admittedly, the recovery is from under the conductor seat of the vehicle. The co-accused Jasmer Singh was sitting on the said conductor seat. Whether the petitioner was in conscious possession of the same or not would be adjudicated upon during the course of the Trial.

In the case of Md. Nawaz Khan (supra), the accused were travelling from Nagaland to Uttar Pradesh and the recovery was from a cavity in the vehicle and it was in that situation that the bail granted to the petitioner was cancelled by the Hon'ble Supreme Court. In the present case, however, the recovery is from a bag lying under the seat of the co-accused

7. In view of the above discussion, a prima facie satisfaction can be recorded under Section 37 NDPS Act.

8. Thus, without commenting upon the merits of the case, the present petition is allowed and the petitioner, namely, Shankar Kumar, is ordered to be released on bail to the satisfaction of the Trial Court/Duty Magistrate concerned.

9. The petitioner shall appear on the first Monday of every month before the local police station till the conclusion of the trial and furnish an affidavit each time that he is not involved in any crime other than the present one.

10. In addition, the petitioner (or someone on his behalf) shall prepare an FDR in the sum of Rs.2,00,000/- and deposit the same with the Trial Court. The same would be liable to be forfeited as per law in case of the absence of the petitioner from Trial without sufficient cause.

(JASJIT SINGH BEDI)
JUDGE

December 12, 2022
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No