

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

-.-

CRM-M-26702 of 2021
DATE OF DECISION: 24.01.2022

Sukhchain Singh @ Sonu

.....Petitioner

versus

State of Punjab

.....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Raj Kumar Gupta, Advocate for the petitioner

Mr. H. S. Multani, AAG Punjab

ALKA SARIN, J.:

Heard through video conferencing.

This is the third petition under Section 439 CrPC for grant of regular bail to the petitioner in FIR No.197 dated 06.10.2019 under Sections 21 and 25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station Sidwan Bet, District Ludhiana (Rural). The first petition for grant of regular bail (CRM-M-8833-2020) was dismissed as withdrawn vide order dated 27.11.2020 while the second petition for grant of regular bail (CRM-M-7869-2021) was dismissed as withdrawn vide order dated 28.04.2021.

As per the allegations, on 06.10.2019 a police party was present and patrolling at Chowk Tihara when secret information was received that one Amandeep Kaur @ Sabbi, who is habitual of selling heroin, is coming on a scooter and if a Naka is laid then heroin can be recovered from her possession. Ruqa was sent to the Police Station for registration of a FIR and to send an Investigating Officer at the spot. The Nakabandi was laid and after sometime Amandeep Kaur @ Sabbi was stopped and the dicky of the scooter was searched

from where 55 gms of heroin in an envelope was recovered. During interrogation of Amandeep Kaur @ Sibba she gave disclosure statement that the petitioner had delivered the heroin to her at her house and that the petitioner had come in car no.PB-09-AA-3383. She further stated that the petitioner was selling heroin and intoxicant tablets and that the petitioner had gone to Himachal Pradesh for purchasing heroin and had promised to give her more heroin at about 6.00 pm at the Toll Plaza near Village Kamalke, District Moga. Statement of Amandeep Kaur @ Sabbi under Section 27 of the Evidence Act, 1872 was recorded and on this statement the petitioner was nominated as an accused. Thereafter, the police party alongwith Amandeep Kaur @ Sibba reached near the Toll Plaza near Village Kamalke, District Moga. After some time a car with no.PB-09-AA-3383 was seen coming and Amandeep Kaur @ Sibba signalled towards the driver and told the police that the driver was the petitioner who who used to supply her heroin. Amandeep Kaur @ Sibba identified the petitioner. The car was stopped and the petitioner was apprehended. The petitioner was informed about his legal right of getting the car searched in the presence of a Gazetted Officer or Magistrate but the petitioner agreed to be searched by the Police. A consent memo was prepared and on search 1140 loose tablets were recovered from the dashboard of the car. The sample of the contraband recovered from Amandeep Kaur @ Sibba and 1140 loose tablets recovered from the petitioner were deposited with the Regional Testing FSL Punjab Ludhiana on 15.11.2019. As per the FSL Report, the salt contained in the tablets was Alprazolam and the recovery of tablets from the petitioner fell within the ambit of commercial recovery.

Learned counsel for the petitioner has contended that the petitioner has been falsely implicated and a false recovery has been fastened from him. It is contended that the petitioner is not named in the FIR and he has been implicated

only on the basis of the disclosure statement of Amandeep Kaur @ Sibba. Learned counsel has further contended that no independent witness was present at the time of the alleged recovery and Section 50 of the NDPS Act has been violated. The search of the car was not conducted in the presence of a Magistrate. It is further the contention that the petitioner has been in custody since 06.10.2019. Learned counsel for the petitioner has also submitted that the trial is proceeding at a very slow pace and none of the witnesses have been examined till now. Lastly, it was submitted that the co-accused Amandeep Kaur @ Sibba has been granted bail by the Sessions Court.

Status report by way of affidavit of Sh. Daljit Singh Virk, PPS, Deputy Superintendent of Police, Jagraon, District Ludhiana (Rural) has been filed wherein it has been stated that the search of the car by the Police was conducted after getting the petitioner's consent and after he was informed about his right to get the search conducted in the presence of a Gazetted Officer or Magistrate but the petitioner had replied that the search may be conducted by the Investigating Officer. According to the status report, the challan was presented in Court on 27.03.2020 and charges were framed on 02.04.2021, however, no witness has been examined in evidence. The State counsel has also argued that compliance of Section 50 of the NDPS Act is attracted only in case of a personal search while in the present case the search was of the car and the recovery was made from an envelope lying in the dashboard of the car. He also argued that there is another FIR No.111 dated 27.10.2018 under Sections 22, 61 and 85 of the NDPS Act pending against the petitioner. State counsel also argued that the petitioner is actively involved in illegally and unauthorizedly dealing in schedule drugs/psychotropic substances and is liable to be prosecuted under NDPS Act .

Heard learned counsel for the parties.

In the present case the petitioner was apprehended by the Police on 06.10.2019 and commercial quantity of Alprazolam recovered, though marginally higher. Without commenting upon the merits of the case and keeping in view the fact that the petitioner has been behind bars since 06.10.2019 and the trial is unlikely to conclude in near future especially in view of the current scenario in the wake of the current wave of the COVID-19 Pandemic, I deem it fit to grant the concession of regular bail to the petitioner. The petitioner is directed to be released on bail subject to his furnishing bail bonds with heavy surety to the satisfaction of the Illaqa Magistrate/Duty Magistrate/Trial Court concerned.

However, the Prosecution will always be at liberty to apply for cancellation of bail in case the petitioner is found to be misusing the concession of bail in any manner.

It is also made clear that any observation made herein shall not be treated as an expression of opinion on the merits of the case.

Disposed off. Pending applications, if any, also stand disposed off.

24.01.2022
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(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO