

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

CRM-M-34773-2021 (O&M)

Date of decision: 07.03.2022

Gurjit Singh @ Gabbar

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mrs. Anupam Bhanot, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

(Through video conferencing)

ARVIND SINGH SANGWAN, J. (Oral)

This is the second petition that has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No. 124 dated 11.10.2018, registered under Sections 22 and 29 of the Narcotic Drugs & Psychotropic Substances Act, 1985 at Police Station Jhabhal, District Tarn Taran.

The first petition, bearing CRM-M-2664-2020, was dismissed as withdrawn on 25.01.2021.

Learned counsel for the petitioner submits that the new ground for filing the present petition is that despite the fact that charges were framed on 03.10.2019, till date, out of total 08 prosecution witnesses, none has been examined due to COVID-19 situation and the petitioner, as on today, is in judicial custody for the last more than 02 years and 07 months.

Learned counsel for the petitioner submits that as per allegations in the FIR, registered at the instance of ASI Kuldip Rai, it is

stated that while on patrol duty, two persons were seen coming on foot, who became perplexed on seeing the police party. On suspicion, the said persons were apprehended and they disclosed their name as 'Gurjit Singh @ Gabbar' and 'Kuldeep Singh @ Happy', respectively. They had thrown the polythene bags from their pocket and replied that out of fear, they had thrown the same, which were consisting loose intoxicant tablets. Thereafter, ASI himself conducted the search and recovered 789 intoxicant tablets.

Learned counsel for the petitioner further submits that one of the moot points, to be decided during trial, is whether on receiving an information that the accused persons are carrying some intoxicant tablets, any information to the police station was immediately given or not for calling a second investigating officer and registration of the FIR, therefore, it will be a matter of trial whether the provisions of Section 42 of the NDPS Act were properly complied with or not.

Learned counsel for the petitioner further submits that even Section 50 of the NDPS Act was not complied with as no option was given to the accused for their search either before a Magistrate or a Gazetted Officer and the same Investigating Officer conducted the entire search and only thereafter, the *ruqa* was sent to the police station.

Learned counsel for the petitioner has placed on record certain documents to show that daughter of the petitioner is critically ill and needs urgent medical attention, for which the petitioner is required to take care of her.

Learned State counsel, on the basis of the custody certificate, filed today in Court, could not dispute the factual position. As per custody certificate, the petitioner is in judicial custody for the last 02 years, 07

months and 10 days and he is on bail in one other case. Learned State counsel could also not dispute that out of total 08 prosecution witnesses, none has been examined so far.

I have heard learned counsel for the parties.

Without commenting upon the merits of the case, considering the aforesaid submissions of learned counsel for the parties, the instant petition is allowed. The petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate/Illaqa Magistrate, concerned.

07.03.2022

Waseem Ansari

**(ARVIND SINGH SANGWAN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No