

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

CRM-M-35331-2020

Date of decision : 09.05.2022

Suresh Kumar

....Petitioner

Vs.

State of Haryana

...Respondent

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Sunil K.Nehra, Advocate for the petitioner.
Mr. Bhupender Singh, DAG, Haryana.

MANOJ BAJAJ, J.

Petitioner has filed this petition under Section 439 Cr.P.C for grant of regular bail in case FIR No.217 dated 13.06.2020 under Sections 21-C, 27-A, 29, 61 and 85 Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station Sadar Fatehabad, District Fatehabad, who was arrested on 13.06.2020.

As per the prosecution, when the police party was on patrol duty, the petitioner was seen coming on motor-cycle and upon his search, 407 grams of heroin was recovered from him and the above case FIR was registered, against him.

Learned counsel for the petitioner contends that the vehicle allegedly used by the petitioner in the alleged crime, is not owned by him and while effecting recovery, provisions of Section 50 NDPS Act were not strictly complied with, therefore, the prosecution case is vitiated. He has further drawn the attention of the Court to the order dated 09.11.2020 and submits that the petitioner was released on interim regular bail. The order dated 09.11.2020 read as under:-

“All the cases listed today have been taken up for hearing by way of video conferencing because of the situation existing due to the Covid-19 pandemic.

By this petition, filed under the provisions of Section 439 of the Cr.P.C., the petitioner seeks the concession of “regular bail”, upon FIR no.217, dated 13.06.2020, having been registered at Police Station Sadar Fatehabad, District Fatehabad, alleging therein the commission of offences punishable under Sections 21-C/27-A/29/61/85 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

Mr. Nehra, learned counsel for the petitioner, submits that though a petition filed by the co-accused of the petitioner under the provisions of Section 438 of the Cr.P.C. was dismissed by this court on July 10, 2020, by a detailed order, however, the present petitioner has been in custody for the past more than 4 ½ months, with even the trial not having commenced so far and with there being no other criminal case registered against him..

Mr. Virk, learned DAG, Haryana, on instructions from Sub-Inspector Surinder Singh, submits that the challan could not be presented due to the ongoing Covid-19 situation, and therefore, the trial has not got underway as yet no other criminal case pending against the petitioner.

That being so, the petitioner is directed to be admitted to interim bail, on his furnishing adequate bail and surety bonds to the satisfaction of the trial court/CJM/Duty Magistrate concerned, till the next date of hearing in this petition.

Adjourned to 02.02.2021.”

According to Mr. Nehra, learned counsel, the above concession has not been misused by the petitioner, and as the FSL report has not been received, therefore, petitioner be released on regular bail.

On the other hand, learned State counsel who is assisted by SI Raj Kumar has vehemently opposed the prayer and argued that the petitioner was carrying commercial quantity of heroin, when he was arrested and provisions of Section 50 NDPS Act were strictly complied with, as on the request of the petitioner, DSP was called at the spot and in his presence, entire recovery proceedings took place. He on instructions further states that the final report already stands filed on 05.02.2021, however, charges are yet to be framed.

After hearing learned counsel for the parties and considering the background of this case, this Court finds that as per the prosecution, the petitioner was possessing commercial quantity of heroin and the same was carried by him in a bag and as the contraband was not recovered from the person of the accused, therefore, the argument that provisions of Section 50 NDPS Act were not strictly complied with is insignificant at this stage of considering the prayer for bail, as this issue can be addressed by the trial Court after evaluating the entire prosecution evidence. Apart from it, the order dated 09.11.2020, whereby petitioner was released on interim regular bail is not based upon merits of the case, much less on any extra ordinary ground or that the FSL report has not been received, therefore, the petitioner cannot avail any benefit of it.

Thus, considering the nature and quantity of the contraband as well as the seriousness of the offence, this Court without expressing any opinion on the merits of this case does not find it to be a fit case for releasing the petitioner on regular bail. Resultantly, the petition fails and is dismissed and petitioner is directed to surrender before the trial Court within next three days.

(MANOJ BAJAJ)
JUDGE

09.05.2022

vanita	Whether speaking/reasoned :	Yes	No
	Whether Reportable :	Yes	No