

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

207

CRM-M-42983-2020

Date of Decision : 10.03.2022

ARSHDEEP SINGH

...Petitioner

versus

STATE OF PUNJAB

...Respondent

CORAM : HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. N. S. Sodhi, Advocate
for the petitioner.

Mr. Amit Mehta, Sr. Deputy Advocate General, Punjab.

AVNEESH JHINGAN, J. (ORAL)

This petition under Section 439 of the Code of Criminal Procedure is filed seeking regular bail in FIR No. 84 dated 29.07.2019 under Sections 22/61/85 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for brevity, "the NDPS Act"), registered at Police Station Sadar Kotakpura, District Faridkot.

As per the case of the prosecution, on 29.07.2019, Police party during routine patrolling, checked a motorcycle without a number plate. The motorcycle was driven by Arshdeep Singh (petitioner) and the pillion rider was Rajwinder Singh @ Yadwinder Singh. From the motorcycle, there was recovery of 80 strips of tramadol tablets that is 800 tramadol tablets. The recovery was from a polythene bag hanged on the motorcycle.

Learned counsel for the petitioner submits that no independent witness was joined by the Police party. The checking was done after sunset in violations of the provisions of the NDPS Act. The Police Official who was called on the spot travelled in a private vehicle whereas there are

instructions of Director General of Police that raid would not be conducted in a private vehicle. He further submits that a joint offer was given to two accused making them aware of their right that they can be got searched by Magistrate or a Gazetted Officer. He further submits that the recovery memo was not signed by the petitioner. He relies upon some of the orders of this Court whereby the accused were granted bail on the basis of the custody period. It is further argued that as per the law laid down by Supreme Court in **Criminal Appeal No.273 of 2007 titled Arif Khan @ Agha Khan Vs. State of Uttarakhand, decided on 27.04.2018**, it is mandatory that the search should be done by the Magistrate only. He submits that the petitioner is in custody since 29.07.2019 there is no progress in trial and co-accused was granted bail by this Court.

Learned State counsel vehemently opposes the prayer and submits that the recovery was of commercial quantity. The petitioner was the owner and the driver of the motorcycle from which the recovery was made. The contention is that it was a chance recovery, the motorcycle was checked during routine patrolling. He heavily relies upon Section 37 of the NDPS Act. He further submits that Supreme Court in case of **Kallu Khan V. State of Rajasthan, 2022(1) R.C.R.(Criminal) 367** held that compliance of Section 50 is not required where the recovery is from a vehicle. Counsel for the State argues that in the orders relied upon by the counsel for the petitioner Section 37 of the NDPS Act was not considered. He argues that merely on custody period, the bail cannot be granted. He further submits that in spite of Covid-19 restrictions, the trial is proceeding at a decent pace, out of twelve prosecution witnesses, five have been examined and there is an earnest efforts to conclude the prosecution evidence within a reasonable time

not later than three months from the date fixed, as all the prosecution witnesses are official witnesses.

Learned State counsel distinguishes the case of the petitioner viz.a.viz the co-accused so far as grant of bail is concerned. He argues that the co-accused was neither linked with the motorcycle nor driving the motorcycle, the recovery was from the motorcycle hence, the petitioner is on a different footing from the co-accused.

The trial is proceeding at a decent pace. In spite of Covid-19 restrictions, twelve prosecution witnesses have been examined and only five remain. The State counsel on instructions has stated that an earnest efforts would be made to conclude the prosecution evidence within three months from the date fixed. As rightly pointed out by the learned State counsel that the petitioner is not at parity with the co-accused for grant of bail. The legal issues raised would be a defence available to the petitioner during the trial.

Considering the progress in the trial and the statement made by learned counsel for the State and that the recovery was of commercial quantity, no case is made out for grant of bail.

Dismissed.

10th March 2022
rimpal

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No