

226

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M No.51193 of 2021 (O&M)

Date of decision: 26.04.2022

Zishan Bukhari

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Saqib Ali Khan, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN J. (Oral)

Prayer in this petition is for grant of regular bail to the petitioner under Section 439 of the Code of Criminal Procedure (in short 'Cr.P.C.') in FIR No.90 dated 03.06.2020, for offence punishable under Sections 22/25/29/61/85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') registered at Police Station City-1, Tehsil Malerkotla, District Sangrur (now District Malerkotla).

Counsel for the petitioner has relied upon the order dated 16.03.2022 passed in CRM-M No.704 of 2021, vide which the main accused namely Farooq, who was arrested at the spot and recovery of 60 vials of WINCIREX were effected, was granted the concession of bail. The operative part of the said order, reads as under:-

“Counsel for the petitioner has further submitted that as per the allegations in the FIR, registered at the instance of ASI Balbir Singh, while on a petrol duty, a

secret information was received that Farooq (petitioner) is indulged in the business of selling intoxicant bottles and tablets by purchasing the same from one Gaurav and he is going on a scooter, looking out for some customers. On receiving the secret information, a message was sent to the Police Station for registration of the FIR and later on, ASI Kanwaljeet Kaur, came at the spot and 60 bottles of Wincirex were recovered.

Counsel for the petitioner has further argued that in fact, the petitioner is a handicapped person having 20% disability. It is also submitted that the petitioner is in custody for the last 01 year and 04 months and he is not involved in any other case. It is further submitted that charges were framed on 02.02.2021 and out of 27 PWs, no PW has been examined as the trial was delayed due to COVID-19 situation.

As per the affidavit of the Superintendent, Central Jail, Patiala, the petitioner, after availing the interim bail was readmitted in Jail on 01.12.2020 and the Medical Board was constituted by Civil Surgeon, Patiala, on 01.03.2021, where the Medical Board has made the following reports:-

- “a. Physical examination shows perforation about 2mm x 2mm post Inf. Quadrant.*
- b. TM congested, discharge present.*
- c. This perforation can be cured with surgery – Tympanoplasty.*
- d. His UDID certificate (Disability Card) issued at Sangrur on 01/12/2020, Certificate No.PB1910419860118164 shows disability to the extent of 27% (twenty seven percent) attached.”*

Counsel for the State on the basis of the Custody Certificate has not disputed the factual position but opposed the prayer for bail.

Without commenting anything on merits of the case, considering the fact that the petitioner is a handicapped person, he is in custody for the last 01 year and 04 months; the petitioner is not involved in any other case; no PW has been examined so far; the custodial interrogation of the petitioner is not required and the conclusion of the trial will take some time due to COVID-19 situation, this petition is allowed and the petitioner is directed to be released on bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate.”

For the sake of brevity, the facts are not reproduced again.

Counsel for the petitioner has further submitted that the petitioner was nominated on the basis of the disclosure statement of the aforesaid Farooq and after the arrest of the petitioner, no further recovery was effected and the petitioner is in custody for the last 01 year and 09 months. It is also submitted that challan stands presented and out of 27 PWs, none has been examined, so far.

Lastly, counsel for the petitioner has relied upon the judgment ***“Tofan Singh vs State of Tamil Nadu”, 2013(4) RCR (Criminal) 631***, to submit that it will be a debatable issue whether the disclosure statement made by the co-accused will be admissible against the petitioner or not.

Counsel for the State on the basis of the Custody Certificate has not disputed the factual position but opposed the prayer for bail.

Without commenting anything on merits of the case, considering the fact that the petitioner is in custody for the last 01 year

and 09 months; the co-accused of the petitioner is already released on bail; out of 27 PWs, none has been examined; the custodial interrogation of the petitioner is not required and the conclusion of the trial will take some time and in view of the judgment of the Hon'ble Supreme in **“Tofan Singh's case (supra)**, this petition is allowed and the petitioner is directed to be released on bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate.

However, it will be open for the prosecution to apply for cancellation of bail of the petitioner, in case he is found involved in any other case or misusing the concession of bail, in any manner.

(ARVIND SINGH SANGWAN)
JUDGE

26.04.2022
yakub

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