

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

CRM-M-50541-2022 (O&M)

Date of decision: 30.11.2022

Ravi Parkash @ Nathu

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. S. K. Bishnoi, Advocate
for the petitioner.

Mr. Deepak Kumar Grewal, DAG, Haryana.

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. 155 dated 02.03.2021, registered under Section 22C of the NDPS Act, 1985 at Police Station Sadar Hisar, District Hisar.

The first petition, bearing **CRM-M-28502-2021**, was dismissed as withdrawn on 02.05.2022 noticing the fact that the petitioner was granted interim bail awaiting the FSL report on 20.09.2021 and he had not surrendered after the receipt of the FSL report.

Learned counsel for the petitioner, at the very outset, relies upon order dated 27.10.2022 passed in **CRM-M-31555-2022**, vide which co-accused Mandeep has already been granted the concession of regular bail. The operative part of the order reads as under:

“Learned counsel for the petitioner submits that the petitioner was granted the concession of interim bail awaiting the FSL report and on the receipt of the same, he has surrendered back. It is further submitted that as on

today, the petitioner is in judicial custody for the last more than 06 months.

Brief facts of the case are that on 02.03.2021, the police party headed by ASI Rohtash Kumar was on a patrol duty and they stopped a car, in which three boys were sitting. The driver of the car disclosed his name as 'Krishan Kumar @ Lala', the persons sitting on the co-driver seat disclosed his name as 'Ravi Prakash Singh @ Nathu' and the person sitting on the rear seat disclosed his name as 'Mandeep', who is the present petitioner. From the boot/dicky of the said car, a plastic bag of yellow colour was found, which was containing intoxicant tablets/capsules. On checking of the said bag, 1750 tablets of *Alprazolam 0.5 mg* in 55 strips, 1000 tablets of *Tramadol HCL* and 800 capsules of *Acetaminophen* were recovered.

Learned counsel for the petitioner further submits that the same Investigating Officer conducted the search and even personal search of the petitioner, in which nothing was found and it will be a matter of trial whether, while conducting the personal search of accused, the mandatory provisions of Section 50 of the NDPS Act were complied with or not.

Learned counsel for the petitioner further submits that the statements of two witnesses have already been recorded and as per statement of PW-2 ASI Rohtash Kumar, it is admitted that he has not called any Gazetted Officer or Magistrate at the spot before conducting the personal search of the petitioner. It is further submitted that a suggestion was given to this witness, to which, he stated that he does not remember whether two passengers namely Ravi Prakash Singh @ Nathu and Mandeep had taken lift from the driver of the car for their residential address. He further stated that it is

correct that the driver of the said car and Ravi Prakash Singh @ Nathu and Mandeep are not of the same village or neighbour.

Learned counsel for the petitioner further submits that in the statement of PW-2/ASI Rohtash Kumar, nothing has come that in the disclosure statement of the driver, i.e. co-accused Krishan Kumar @ Lala, it is stated that the petitioner or co-accused Ravi Prakash Singh @ Nathu had actively participated in the commission of crime or they had knowledge about the drugs lying in the boot of the car and in the absence of the same, again it will be a matter of trial whether the petitioner and Ravi Prakash Singh @ Nathu were in conscious possession of the contraband recovered.

Learned counsel for the petitioner has referred to the statement of PW-3 SI Radha Krishan, another Investigating Officer, to submit that even in the statement of this witness, nothing has come on record that the driver Krishan Kumar @ Lala has made any disclosure about the involvement of the petitioner.

Learned State counsel has filed the custody certificate, according to which, the petitioner is in judicial custody for the last 06 months and 19 days and he is not involved in any other case.

Learned State counsel has referred to the disclosure statement of Ankit Rana, who has stated that he has friendship with Krishan Kumar @ Lala, who has brought intoxicant substances from Rajasthan from some unknown person at an eating place and Krishan Kumar @ Lala has deposited an amount of Rs. 4,000/- in the account of Ankit Rana.

In reply, learned counsel for the petitioner has submitted that in the said disclosure, it has nowhere come that any amount was given to the petitioner and it

is the consistent defence of the petitioner that he along with co-accused Ravi Prakash Singh @ Nathu had taken lift in the said car.”

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

Learned counsel for the petitioner submits that even the petitioner was granted the interim bail awaiting the FSL report and thereafter, he has surrendered back after receipt of the FSL report.

It is further submitted that the custody of the petitioner is 01 year, 01 month and 12 days and he is not involved in any other case. It is also submitted that even the petitioner had taken lift along with co-accused Mandeep, who has already been granted the concession of regular bail as noticed above.

Learned State counsel has filed the custody certificate, according to which, the custody of the petitioner is 01 year, 01 month and 12 days and he is not involved in any other case.

I have heard learned counsel for the parties.

Without commenting upon the merits of the case, considering the fact that the petitioner has undergone judicial custody for 01 year, 01 month and 12 days; he is not involved in any other case and also in view of the fact that similarly situated co-accused has already been granted the concession of regular bail by this Court as noticed above, 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/Illaq Magistrate, concerned.

30.11.2022

Waseem Ansari

**(ARVIND SINGH SANGWAN)
JUDGE**

*Whether speaking/reasoned
Whether reportable*

*Yes/No
Yes/No*