

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CRM-M-51819-2022 (O & M)****Date of decision: 22.11.2022**

Gurpreet Singh @ Kala

.... Petitioner

V/s

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Rajvinder Kaur Sohal, Advocate, for the petitioner.

Ms. Ramta Chaudhary, DAG, Punjab.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 439 Cr.P.C. is for the grant of the regular bail to the petitioner in case FIR No.72 dated 18.09.2021 under Sections 22, 27 of the NDPS Act, 1985 registered at Police Station Singh Bhagwantpura, District Rupnagar (Annexure P-1).

2. The allegations in the FIR are that the police party was on patrolling duty when near the area of village Gaunsla two Hindu youth were seen coming on a motorcycle from the front and on seeing the police vehicle they became perplexed and were about to turn the motorcycle around, when all of a sudden, the motorcycle driver threw the polythene bag kept on the tank of his motorcycle on the right side at the Kuccha place of grass. The two youths were apprehended and the motorcycle driver disclosed his name as Gurpreet Singh @ Kala (present petitioner) son of Sukhvir Singh and the pillion rider as Ravinder Singh @ Binder son of Kulwant Singh (since granted bail vide order dated 30.05.2022 passed in CRM-M-19948-2022).

From the green coloured polythene bag thrown away of Gurpreet Singh @ Kala (petitioner), strips of intoxicating tablets were recovered.

3. The learned counsel for the petitioner contends that the motorcycle involved in the case is not related to the petitioner and has been planted by the police. Initially, the bike was owned by someone else and it was only subsequent to the registration of the FIR that it was transferred to the name of the father of the petitioner on 05.01.2022. He contends that the petitioner was allegedly found in conscious possession of two types of intoxicating tablets, one containing Tramadol Hydrochloride and another containing Lomotil. He contends that Lomotil does not fall in the definition of manufactured drugs. The recovery has been shown from the public place, however, no independent witness was joined during the course of police proceedings. Since the petitioner was in custody since 18.09.2021, the challan had already been presented and he was a first-time offender, the further incarceration of the petitioner was not required, and therefore, he ought to be granted the concession of bail.

4. The learned counsel for the State, on the other hand, contends that the petitioner was found in conscious possession of commercial quantity of contraband i.e. Diphenoxylate Hydrochloride. As per the prosecution case, the petitioner was the driver of the bike and, at this stage, the ownership of the bike is not a relevant consideration in view of the fact that the petitioner was found to have thrown away the contraband when the police party reached the spot. He, thus, contends that in view of the bar under Section 37 of the NDPS Act, the petitioner does not deserve the concession of bail.

5. I have heard the learned counsel for the parties at length.

6. As per the case of the prosecution, the petitioner, who was the motorcycle driver threw the polythene bag kept on the tank of the motorcycle on the grass when the police party attempted to apprehend them. The recovery from the polythene bag is of a commercial quantity of contraband.

7. In view of the above, the bar under Section 37 of the NDPS Act would certainly operate and no prima facie opinion can be recorded by this Court that the petitioner has not committed the offence in question and was not likely to commit any offence in future.

8. In the facts and circumstances of the case, I find no merit in the present petition. Therefore, the same is hereby dismissed.

(JASJIT SINGH BEDI)
JUDGE

November 22, 2022
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No