

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-55314-2022 (O&M)
Date of decision: 05.12.2022

Rajinder Singh

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Aayush Gupta, Advocate
for the petitioner.

Mr. Shubham Kaushik, DAG, Punjab.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for grant of regular bail in FIR No.184 dated 10.07.2018 under Section 21/61/85 of NDPS Act, registered at Police Station Division No.6, District Police Commissionerate Ludhiana.

Learned counsel for the petitioner, at the very outset, relies upon the order dated 26.10.2020 passed in CRM-M-32466-2020, vide which co-accused Ashish Kumar was granted the concession of regular bail. The operative part of the order reads as under: -

“...As per the allegations levelled in the FIR, on 10.7.2018 when a police party was holding a nakabandi at T-Point, Dolewal Road, Near Flyover, Dolewal, Ludhiana for checking of suspicious vehicles and persons. At about 1.00 p.m., one Mahindra Duro

Scooter bearing No.PB10- DV-5159, black colour was seen coming driven by one turbaned man and a clean shaven man was riding pillion. On seeing the police party, the driver of the scooter got scared and tried to take a U-turn, but suddenly, his scooter turned off. Both of them were apprehended. On enquiry, they disclosed their identity as Rajinder Singh Arora @ Toni and Ashish Kumar. On search, a black colour polythene bag was recovered containing 240 strips of intoxicant tables X1-PAM 0.5, each strip carrying 10x10 tables each, totaling 2400 tablets having Salt ALPRAZOLAM. On these broad allegation, the present FIR was registered.

Learned counsel for the petitioner contends that the petitioner was a pillion rider on a two-wheeler and therefore, it would be debatable if the petitioner was actually in conscious possession of the contraband. He further submits that the concession of interim bail was extended to the petitioner by the trial Court vide order dated 14.9.2018 as the FSL report was awaited and later, upon the receipt of the FSL report, the petitioner surrendered on 29.4.2019 and since then he is confined in judicial custody. According to him, except for this present case, the petitioner is not involved in any other case and as the trial is not making any headway, therefore, further custody of the petitioner may not be necessary. He prays that the petitioner be released on regular bail during the pendency of the trial.

On the other hand, learned counsel for the State assisted by ASI Davinder Singh has opposed the prayer on the ground that the petitioner was arrested on the spot and the recovered contraband falls within the ambit of commercial quantity. He, on instructions, further states that the charges were framed on 5.10.2019, but no prosecution witness has been examined so far out of total 13 witnesses...”

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

Learned counsel submits that recovery from the petitioner was of 2400 tablets of X1-PAN 0.5 and 4500 tablets namely Restwel .25. It is further submitted that the petitioner is holding a valid drug licence under Form 21 of the Drugs and Cosmetics Rules, in which he has been granted permission to sell the scheduled drugs. It is also submitted that the petitioner is having a partnership firm with his brother Harkirat Singh, therefore, it will be a matter of trial whether qua the recovery effected from him, he was holding a valid licence. Learned counsel has relied upon the drug licence, partnership deed as well as GST registration number and the receipts of purchasing of the drugs, recovery of which was effected from the petitioner.

Learned counsel has argued that one of the point involved in the present case is whether the petitioner has violated the provisions of NDPS Act or it would fall in the Drugs and Cosmetics Act. It is further submitted that the petitioner was granted the concession of interim bail awaiting FSL report and during the period, when he was on interim bail, he has not committed any further offence and has not misused the concession. It is also submitted that the petitioner was re-arrested on 29.09.2022 and since then, he is in custody and as on today, custody of the petitioner is 04 months and 07 days and it will take some time in conclusion of the trial.

Learned State counsel has, however, submitted that recovery from the petitioner is of commercial quantity. It is not disputed that the petitioner is holding a valid drug licence under Drugs and Cosmetics Act and one co-accused of the petitioner, namely Ashish Kumar has already been released on regular bail.

After hearing learned counsel for the parties, without commenting anything on merits of the case and considering the fact that the petitioner is first offender; he has set up a defence that he was holding a valid drug licence on the date of recovery, therefore, it will be a matter of trial whether any offence under NDPS Act is made out or not and also in view of the fact that during the period, when he was on interim bail, he misused the concession and it will take some time in conclusion of the trial, as only charges have been framed and prosecution evidence is yet to start, this petition is allowed and the petitioner is directed to be released on regular bail subject to furnishing his bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate, concerned.

Petition is disposed of.

[ARVIND SINGH SANGWAN]
JUDGE

05.12.2022
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No