

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(205)

CRM No. M-3763 of 2023

Date of Decision : 28.03.2023

Binder Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Karandeep Singh Sidhu, Advocate for the petitioner.

Mr. Gurvinder Singh, Assistant Advocate General, Punjab.

Harsimran Singh Sethi J. (Oral)

The present petition has been filed seeking grant of regular bail to the petitioner in FIR No. 152 dated 14.09.2021, registered under Sections 22 and 29 of the NDPS Act, 1985 at Police Station Vairo Ke, District Fazilka.

Learned counsel for the petitioner argues that though, it is alleged that quantity of the contraband recovered from the petitioner is commercial quantity but in the facts and circumstances of the present case, the contraband in question cannot be treated to be in possession of the petitioner as the same was recovered from the ground.

Notice of motion.

On the asking of the Court, Mr. Gurvinder Singh, learned Assistant Advocate General, Punjab, who is present in Court, accepts notice

on behalf of the respondent-State.

Learned counsel for the respondent-State submits that in the FIR dated 14.09.2021, it has already been mentioned that the petitioner was holding the said bag, which he threw on the ground after noticing the police party.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

Once, in the statement of allegations as recorded in the FIR that petitioner was holding the contraband and was thrown on the ground after noticing the police party, it cannot be said that the recovery of the contraband, which was seen in the hand of the petitioner by the police, which fact has been recorded in the FIR, is to be ignored. Further, in case, the argument of the petitioner that the recovery was done from the ground is to be accepted then, every accused on being found by the police having contraband in his/her possession, will throw the same on the ground and will claim that he was not having the possession, which is not the intent of the NDPS Act. Hence, the argument being raised by learned counsel for the petitioner that the recovery was done from the ground and the said recovery cannot be treated to be in possession of the petitioner, cannot be accepted.

The benefit of the judgment of the Co-ordinate Bench being cited in CRM No. M-53161 of 2021 titled as ***Hardeep Singh @ Happy @ Harjit Singh***, decided on 25.05.2022 cannot be extended to the petitioner in the facts and circumstances of the present case.

Learned counsel for the petitioner submits that as the police was in a private vehicle, the benefit is to be given to the petitioner with

regard to the recovery of the contraband done from the petitioner. Whether, any irregularity was committed by the police party while making recovery of the Narcotics, will depend upon the evidence, which will come on record. As of now, the contention of the petitioner that the police party was in a private vehicle, which allegation itself cannot be a ground to grant the benefit of bail, especially when the Narcotics in commercial quantity has been recovered from the petitioner.

Learned counsel for the petitioner further submits that as the petitioner is behind bars for the last more than one year and six months, he is entitled for the grant of regular bail only on the basis of the custody undergone.

It may be noticed that where commercial quantity has been recovered from an accused of the Narcotics, Section 37 of the NDPS Act applies, according to which, two hurdles are to be cleared before a claim of the grant of bail is to be considered. The first is that the court comes to the conclusion that the allegations are false and secondly, the accused will not indulge again in the same activities in case, the bail is granted.

In the present case, nothing has been brought on record to show that the allegations being alleged against the petitioner are false. That being so, petitioner has not been able to cross the hurdles imposed by Section 37 of the NDPS Act so as to claim the benefit of grant of regular bail, hence, merely on the basis of the custody undergone, no bail can be granted by this court.

Keeping in view the above, no ground is made out for the grant of regular bail to the petitioner in the present case.

Dismissed.

However, it is made clear that anything observed herein shall not be construed to be an expression of any opinion on the merits of the case.

March 28, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No