

219

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

CRM-M-7921-2023(O&M)
Date of Decision: 27.04.2023

SAHIB KHAN

....Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. I.S. Saggu, Advocate
for the petitioner.

Mr. Harjinder S. Sidhu, AAG, Punjab.

HARSH BUNGER, J. (Oral)

1. The instant petition has been filed under Section 439 Cr.P.C for grant of regular bail to the petitioner in case FIR No.301 dated 23.10.2022 registered under Section 21(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Sector 65 Gurugram (Annexure P-1).

2. Status report by way of affidavit of Preet Pal, H.P.S., Assistant Commissioner of Police, Crime-I, Gurugram on behalf of respondent/State of Haryana is already taken on record.

3. Custody certificate dated 26.04.2023 of the petitioner filed by the learned State counsel is taken on record, subject to all just exceptions.

4. The brief facts of the case are that on 22.10.2022, PSI Manoj Kumar, SDP Unit Sector 17 alongwith ASI Hardeep Singh, HC Shakti Singh, Constable Mandeep, Constable Balraj, Constable Yudhveer in a Government vehicle no.HR-GV-2159 were present at Badshahpur bus stand.

A secret informer informed that Sahib Khan son of Waheed Khan is having

smack in his possession and was going from Delhi to Bhondsi jail road side in his vehicle no. HR-55-X-5646. On this information, raiding party was prepared and Duty Officer Sh.Vivek Aggarwal AETO DETC Excise EAST Gurugram was informed. After about one and half hour one car bearing no. HR-55-X-5646 was seen coming. Said car was signaled to stop. On inquiry, the driver of the said car told his name as Sahib Khan son of Waheed Khan. Notice under Section 50 NDPS was served upon him to which he replied that he wants to get the search conducted in the presence of a Gazetted Officer. On checking, he was found in his conscious possession of 99.5 grams of smack, which was taken into custody.

5. Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case. It is submitted that mandatory provisions of Narcotic Drugs and Psychotropic Substances Act was not complied with and no independent witness was joined at the time of alleged recovery, which makes the recovery doubtful. It is further submitted that the alleged recovery of 99.5 grams of smack falls in the category of “non-commercial”, hence, bar under Section 37 of Narcotic Drugs and Psychotropic Substances Act is not attracted. It is next submitted that the petitioner is in judicial custody since 24.10.2022 and he has undergone 06 months and 03 days as on 26.04.2023. Learned counsel also submitted that the petitioner is not involved in any other case and nothing is to be recovered from the petitioner. It is stated that challan has been presented in this case and even charges have been framed. Learned counsel further states that there are total 14 prosecution witnesses in the present case and none has been examined till date, the trial is likely to take long time and no useful purpose would be served by keeping him behind the bars any further. It is submitted that the petitioner had applied for grant of regular bail before the Additional

Sessions Judge, Gurugram which has wrongly been dismissed vide order dated 19.01.2023 (Annexure P-2). Learned counsel further submits that the petitioner herein is ready to abide by all the conditions as may be imposed by this Court or by the trial Court, accordingly prayer for grant of regular bail is made.

6. Learned State counsel opposes the plea of petitioner for grant of regular bail on the ground of seriousness of the offence. However, he does not dispute the fact that challan has been presented in this case and even charges have been framed. It is also not disputed that the present petitioner is not involved in any other case.

7. I have heard learned counsel for the parties and perused the paper book, status report as well as the custody certificate of the petitioner handed over by learned State counsel, in Court today.

8. In this case petitioner is a young boy of around 22 years of age and is behind the bars for the last more than six months. As per the custody certificate, there is no case pending against the petitioner. The challan in the present case has been presented and the charges have been framed. There are total 14 prosecution witnesses; however no witness has been examined till date. No useful purpose would be served by keeping the petitioner behind bars.

9. Keeping in view the aforementioned circumstances, the instant petition is allowed and the petitioner is ordered to be released on regular bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate concerned. However, the concerned Station House Officer shall be informed about the release of petitioner and the petitioner shall inform the concerned Station House Officer about his

address at which he intends to reside during the pendency of case and any change in the address shall also be communicated to the concerned Station House Officer, forthwith. The petitioner would also furnish his telephone number to the concerned Station House Officer. He shall appear before the police station concerned on the first Monday of every month till the conclusion of the trial.

10. In addition, the petitioner (or any one on his behalf) shall prepare a FDR in the sum of Rs.50,000/- and deposit the same with the trial Court. The same would be liable to be forfeited as per law in case of the absence of the petitioner from trial without sufficient cause.

11. Nothing expressed here-in-above shall be construed to be an observation on merits of the case and the facts and circumstances recorded above are only for consideration of the prayer for bail at this stage.

12. The petition is accordingly disposed of.

27.04.2023

Amandeep

**(HARSH BUNGER)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No