

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

210

CRM-M-18227-2023
Date of Decision: 02.08.2023

Princepal Singh @ Prince

.....*Petitioner*

Versus

State of Punjab

.....*Respondent*

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH.

Present: Mr. H.S. Bhogal, Advocate for the petitioner.

Mr. Yadwinder Singh, AAG, Punjab.

GURBIR SINGH, J

1 The present petition has been filed by the petitioner praying for grant of regular bail in case FIR No.131 dated 27.06.2020, under Sections 21 of NDPS Act, registered at Police Station Shimlapuri District Ludhiana.

2 As per version of the prosecution, secret information was received against the petitioner, so ruqa was sent to the police station for registration of the case. During checking, the petitioner was apprehended and on his personal search and 51 grams of intoxicant powder was recovered from the polythene bag which he was carrying in his right hand. Same was taken into possession. As per the report of FSL, the said powder contained '*Diphenoxylate Hydrochloride*'.

3 Learned counsel for the petitioner submits that search was conducted in violation of the provision of Section 50 of the NDPS Act. The Sub Inspector offered that he wanted to conduct his search and search of the polythene bag which he was carrying. He could give offer of search from some gazetted officer or Magistrate. The weightment was done with

the polythene bag, so, it is debatable, if the alleged recovery of intoxicant substance was of commercial quantity. As per Section 2[(viiia)], 'commercial quantity', in relation to narcotic drugs and psychotropic substances, means any quantity greater than the quantity specified by the Central Government by notification in the Official Gazette;]. He relies on cases 'Avtar Singh vs. State of Punjab, CRM-M-37272-2022, decided on 09.11.2022 and 'Balwinder Singh Vs. State of Punjab, CRM-M-37684-2021, decided on 14.02.2022'. The petitioner has undergone actual sentence of one year, two months and twenty eight days in this case.

4 Custody certificate as well as status report by way of affidavit of Sandeep Wadehra (PPS) HPS, Assistant Commissioner of Police, Industrial Area-B, Ludhiana, on behalf of respondent-State, filed in Court today. The same are taken on record.

5 On the other hand, learned State counsel opposes the plea of the petitioner for grant of regular bail and submits that the recovery from the petitioner is of commercial quantity of '*Diphenoxylate Hydrochloride*'. The search was conducted as per rules. The petitioner was earlier released on interim bail as report of FSL was not received regarding the contents of the contraband. After receipt of the report, petitioner surrendered before the Court below. He fairly submits that the petitioner has undergone actual sentence of one year, two months and twenty eight days in this case. On asking, he submitted that no PW is yet examined in this case.

6 Heard.

7 As per Section 2[(viiia)], more than 50 grams of '*Diphenoxylate Hydrochloride*' powder is 'commercial quantity'. Since recovery of contraband includes the polythene bag, so it is debatable at this stage, if the

recovery of contraband from petitioner is of 'commercial quantity' or less than 'commercial quantity' or it was less than 1 gram more than commercial quantity. The trial is going at slow pace and even single witness has not been examined yet.

8 Without commenting on the merits of the case, I am of the view that it is debatable that recovery from the petitioner is of 'commercial quantity' and speedy trial is the right of the accused as held in 'Satender Kumar Antil Vs. Central Bureau of Investigation and Another, 2022 AIR (SC) 3386', besides bearing in mind that the trial is likely to take long time and no useful purpose would be served by keeping the petitioner behind bars, present 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. The petitioner shall also abide by the following conditions:-

1. *The petitioner shall surrender his passport and shall not leave the country without the prior permission of the Trial Court/court concerned*
2. *The petitioner shall give his mobile number to the Trial Court and get the same registered, on which SMS shall be received from the CIS and shall not change his mobile number during pendency of the case.*
3. *The petitioner shall not change his residence without prior intimation to the SHO concerned and the trial Court.*
4. *The petitioner shall appear before the Trial Court on each and every date of hearing.*

9 The Trial Court is at liberty to impose any other condition that it may deem appropriate. It is further clarified that in case of default of any of the conditions, then the concerned Court is competent to cancel the bail

granted to the petitioner.

10 Nothing stated herein above be construed as a final expression of opinion on the merits of the case and the trial Court would proceed independently of the observations above, which have only been made for the purpose of adjudication of the present petition for grant of regular bail.

02.08.2023
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(GURBIR SINGH)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No