

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

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CRM-M-22082-2022 (O&M)
Date of Decision: 16.03.2023

NAVEEN KUMAR

... Petitioner

VERSUS

STATE OF U.T., CHANDIGARH

... Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Ishan Sharma, Advocate
for the petitioner.

Mr. Akashdeep, APP, U.T. Chandigarh.

VINOD S. BHARDWAJ, J. (ORAL)

CRM-19045-2022

Allowed as prayed for.

CRM-M-22082-2022

The present petition has been filed under Section 439 of the Code of Criminal Procedure 1973 for seeking concession of regular bail for the petitioner in case FIR No.0276 dated 20.10.2021 under Section 21 of Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station: Sector 39, District Chandigarh.

Briefly summarized, the case of the prosecution is that the patrolling party was present in the area of Sector 37, Chandigarh at around 09.30 P.M. when they saw one boy walking with hanging a heavy bag on his right hand. On seeing the police party, the boy tried to change course and to run away whereupon the police officials asked him to stop. An enquiry was made from the boy as to what was he carrying in the bag, to which he

responded that there food and fruits. Getting suspicious on the examination of facial expression of the said person, search was conducted. Four apples and six bananas alongwith off-white polythene beneath them were found in the said bag. On asking, he informed that it was an intoxicant substance. Accordingly, a kit for detection and weighment of the intoxicant substance was called for. The same was detected to be heroin. The suspect i.e. petitioner herein could not produce any valid licence or permit being in possession of the contraband, whereupon he was taken in custody. The recovered contraband was found to be 261 grams.

Learned counsel for the petitioner contends that the respondent-Authorities have not complied with the provisions of Section 50 of the N.D.P.S. Act, 1985. No independent witness was joined in the investigation. Besides, the seized property was weighed alongwith the polythene and that in the event of deduction of the aforesaid weight of polythene, the same would be less than the commercial quantity, which is at 250 grams. He thus contends that the marginal weight being small, the petitioner is entitled to the concession of regular bail. He further contends that the investigation in the present case is already complete and the prosecution has cited as many as 22 witnesses and not even a single witness has yet been examined by the prosecution. The petitioner has already undergone an actual custody of 01 year one 04 months and 05 days. He submits that the petitioner is not involved in any other case.

On the other hand, learned State Counsel vehemently opposed the bail by submitting that it was a case of chance recovery and that the submission advanced by the counsel for the petitioner about the weighment of the pouch cannot be given much credence since the bag in which the petitioner was carrying the contraband has actually not been taken into consideration

while weighing the seized contraband. He, however, could not controvert the fact that the petitioner has already undergone actual custody of 01 year 04 months and 05 days and no evidence has been recorded before the trial Court so far. It was also not disputed that the petitioner does not suffer from any other criminal antecedents.

Taking into consideration the circumstances noticed above coupled with the fact that the petitioner has clean antecedents and that the trial of the case might take long time owing to the fact that out of the 22 witnesses that have been cited by the prosecution, not even a single witness has yet been examined, I deem it appropriate to grant the concession of regular bail to the petitioner.

Accordingly, the present petition is allowed and the petitioner is admitted to regular bail on his furnishing adequate bail/surety bonds to the satisfaction of trial Court/Duty Magistrate concerned.

It is made clear that the petitioner shall not extend any threat and shall not influence any prosecution witnesses in any manner directly or indirectly.

The observations made hereinabove shall not be construed as an expression on the merits of the case and the trial Court shall decide the case on the basis of available material.

Petition stands allowed accordingly.

16.03.2023
rajender

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No