

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(207)

2023:PHHC:059878
CRM-M-26012-2021
Date of Decision: 27.04.2023

Naresh Kumar

--Petitioner

Versus

State of Haryana

--Respondent

CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ.

Present:- Mr. Vikas Bishnoi, Advocate for the petitioner.

Mr. B.S. Virk, DAG, Haryana.

RAJESH BHARDWAJ.J (Oral)

The present petition has been filed under Section 439 Cr.P.C praying for grant of regular bail to the petitioner in case FIR No.399 dated 25.10.2020 registered under section 22-C of NDPS Act at Police Station, Sadar Fatehabad, District Fatehabad.

As per facts of the case, when the police party was on patrolling duty then two young boys on motorcycle were apprehended. On their asking one who was driving the motorcycle disclosed his name to be Naresh Kumar i.e. the present petitioner, whereas the other who was riding the pillion disclosed his name to be Pawan Kumar. They were carrying a white polythene kept between them and offer was given to them for search of the same. On having been served the notice search of the polythene bag was conducted and police party recovered 64 strips of Tramadol and 76 strips of Alprazolam. On recovery the FIR in question was registered as both the petitioners failed to produce any license for the prohibited drugs. On weighing the total weight of the Tramadol came to 688 grams whereas weight of Alprazolam was 165 grams. Thus the total weight of both the

drugs amounted to the commercial quantity.

Petitioner approached the court of learned Special Judge, under NDPS Act, Fatehabad, for grant of bail, however, after hearing the parties same was declined vide order dated 8.2.2021. Aggrieved by the same petitioner has approached this court praying for grant of bail.

Learned counsel for the petitioner has vehemently contended that petitioner has been falsely implicated in the present case. He submits that recovery has been made in a public place, however, no independent witness has been joined by the police. It is submitted that during investigation name of third accused Kalu Ram was also surfaced in this case. Counsel submits that rest of the two accused have already been granted bail and petitioner is behind bars for the last about 2 ½ years. It is submitted that after completion of investigation charges have been framed and prosecution has not even examined half of the witnesses as cited in the challan. It is submitted that petitioner has no criminal antecedents and he deserves to be granted bail.

On the other hand, learned State counsel on instructions from ASI Darshan Singh has opposed the submissions made by counsel for petitioner. It is submitted that petitioner was arrested on spot, whereas the co-accused who was riding the pillion was juvenile and the complicity of the third accused was found on the basis of disclosure statement and hence he was granted bail, however, petitioner was arrested on spot and the quantity being commercial in nature, he does not deserve the concession of bail. It is submitted that out of total 17 prosecution witnesses only 2 have been examined by the Trial Court. It is further submitted that petitioner has no criminal antecedents as he has not been involved in any other case.

I have heard learned counsel for the parties at length and have gone through the records carefully.

Admittedly, petitioner is behind bars since 25.10.2020. Though the recovery effected from the accused is commercial in nature, however, the investigation already stands completed and charges were framed. Out of the total 17 prosecution witnesses only 2 have been examined so far. As per information provided to learned State counsel petitioner has no criminal antecedents. There is no gainsaying that every accused has a right of speedy trial. Keeping in view the overall facts and circumstances of the case and the custody period of the petitioner, this court is of the opinion that petitioner deserves to be granted the benefit of bail.

This court would refrain itself from commenting on the merits of the case, as the allegations and counter allegations would be assessed only after evaluation of the complete evidence led by both the sides before the Trial Court. The trial would take sufficiently long time in its conclusion.

In the totality of facts and circumstances and without making any observation on merits, present petition is allowed. Petitioner be enlarged on bail on his furnishing bail/surety bonds subject to satisfaction of Trial Court/Duty Magistrate, concerned. Nothing stated herein shall be treated as an expression on the merits of the case.

(RAJESH BHARDWAJ)
JUDGE

27.04.2023

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