

CRM-M-25029-2023

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(233)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-25029-2023

Date of Decision: 27.07.2023

VINOD KUMAR

... Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. P.S. Sekhon, Advocate
for the petitioner.

Mr. Kanwar Sanjiv Kumar, Asstt. A.G., Haryana.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 439 Cr.P.C. is for the grant of regular bail in case bearing FIR No.193 dated 30.03.2022 registered under Sections 22-C, 29(1) of the NDPS Act, 1985 and Section 25 of the Arms Act, 1959 at Police Station City Fatehabad, District Fatehabad.

2. The brief facts of the case are that while the police party was on patrolling duty, secret information was received that Vinod Kumar (petitioner) son of Brijlal and Ashish Kumar son of Jagdish Chand would be travelling in a car bearing Registration No.DL-8CAW-4606 to Fatehabad for selling intoxicating tablets. After some time, the car was seen coming and was signalled to stop. However, the driver of the car tried to turn the vehicle and it suddenly switched off. The driver disclosed his name as Vinod Kumar (petitioner) and the boy sitting on the conductor seat disclosed his name as Ashish Kumar. After complying with the provisions of the NDPS Act

regarding search and seizure, the recovery of 588 strips (5880 tablets) of Alprazolam tablets IP 0.5 mg having a total weight of 1 kg 190 gms, 45 strips (450 tablets) of Tramadol tablets having a total weight of 222 gms and an illegal pistol loaded with a cartridge came to be effected from a bag lying in the car.

3. The learned counsel for the petitioner contends that the mandatory provisions of Sections 42 and 50 of the NDPS Act have not been complied with. The petitioner was a taxi driver providing service to passengers. He was also a Member of the Rajasthan Taxi Operator Union, District Hanumangarh. During the course of investigation, the petitioner had also got recorded his disclosure statement wherein, he had stated that he was a driver and his co-accused Ashish Kumar had hired his vehicle Ertiga car No.DL-8CAW-4606 for Mehuwala (Fatehabad) and that he (petitioner) did not know anything about the intoxicating tablets and country-made pistol recovered from the bag kept by the co-accused Ashish Kumar. Ashish Kumar also got recorded his disclosure statement that he had obtained the tablets from Vijay Nagar (Rajasthan). He, therefore, contends that so far as the petitioner is concerned, it was apparent that he was innocent being merely a driver of the vehicle and therefore, he was entitled to the concession of bail as he was otherwise in custody since 30.03.2022 and only 10 of the 28 prosecution witnesses had been examined so far which would delay the conclusion of the trial.

4. A reply dated 24.07.2023 by way of an affidavit of Jagdish Kumar, HPS, Deputy Superintendent of Police, HQ, Fatehabad has been filed

on behalf of the State by the learned counsel for the State. The same is taken on record. While referring to the reply, he admits that as per the investigation, the petitioner was a driver of the vehicle and did not know about the contents of the bag in the possession of Ashish Kumar (co-accused). He, however, contends that the offence is serious and therefore, the petitioner was not entitled to the grant of bail.

5. I have heard the learned counsel for the parties.

6. Admittedly, no recovery has been effected from the petitioner but only from the bag in the possession of his co-accused. It would be a moot point during the course of the trial as to whether any liability can be affixed upon the petitioner. He is in custody since 30.03.2022 and only 10 of the 28 prosecution witnesses have been examined so far. Therefore, the trial of the present case is not likely to be concluded anytime soon. In this situation, his further incarceration is not required, moreso, as he is a first-time offender.

7. Thus without commenting on the merits of the case, the present petition is allowed and the petitioner-Vinod Kumar son of Brij Lal is ordered to be released on bail on his furnishing bail bonds and surety bonds to the satisfaction of learned CJM/Duty Magistrate, concerned.

8. The petitioner shall appear before the police station concerned on the first Monday of every month till the conclusion of the trial and inform in writing each time that he is not involved in any other crime other than the present case.

9. In addition, the petitioner (or anyone on his behalf) shall prepare an FDR in the sum of Rs.50,000/- and deposit the same with the Trial Court.

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The same would be liable to be forfeited as per law in case of the absence of the petitioner from trial without sufficient cause.

10. The petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

27.07.2023

JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No