

CRM-M-28991 of 2023

2023:PHHC:122219

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

CRM-M-28991 of 2023

Date of decision: 15.09.2023

Sahib Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. Ramnish Puri, Advocate,
for the petitioner.

Mr. P.S. Bajwa, Addl. A.G., Punjab.

NAMIT KUMAR, J.

1. Instant second petition has been filed by the petitioner under Section 439 Cr.P.C. seeking regular bail in case FIR No.09 dated 08.01.2021 under Section 21/22/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Jandiala, District Amritsar.

2. FIR in the present case was registered by the police on the allegations that the police party headed by ASI Sewa laid a naka at Bridge Drain Fatehpur, Rajputana, in connection with checking of suspected persons. Two persons on a scooter bearing registration No.PB-02DA-1187 were seen coming. The police party gave a signal to stop the scooter. Upon this, the driver tried to escape by taking a U-turn, but the scooter fell down due to loss of control and they had been

intercepted by the police. The pillion rider had thrown a transparent polythene bag on the side of the road. The person driving the scooter was identified to be Sahib Singh (petitioner) and the pillion rider was Vipin Kumar. On checking of polythene bag, recovery of 890 intoxicating tablets was effected.

3. Pursuant to notice of motion, status report by way of affidavit of the Sucha Singh, Deputy Superintendent of Police, PBI-NDPS, cum-Narcotics, Amritsar (Rural), filed in the Court today, is taken on record.

4. Learned counsel for the petitioner contended that the petitioner is 60% disabled person and is innocent and has falsely been implicated in the present case. He further contended that there is violation of Sections 42 and 50 NDPS Act. He further contended that it is highly improbable that one would smuggle intoxicating tablets in a transparent polythene bag making it visible to everyone. He further submitted that the petitioner has been in custody for 01 year, 04 months and 22 months. He further submitted that investigation in the present case is complete; challan has been presented; charges have been framed and out of 14 prosecution witnesses, 03 witnesses have been examined so far. Now the case is fixed for 17.10.2023 before the trial Court for prosecution evidence and the trial is likely to take a considerable time to conclude. Therefore, no fruitful purpose would be served by detaining the petitioner behind bars. Thus, he may be granted the concession of regular bail.

5. Per contra, learned State counsel, while placing on record custody certificate of the petitioner, opposed the contentions raised by learned counsel for the petitioner by stating that since the recovery of intoxicating tablets had not been effected from the personal search of the petitioner, provisions of Section 50 NDPS Act are not attracted. However, he does not deny the custody period of the petitioner. He further submitted that the extent of intoxicating tablets recovered in the present case falls under the category of 'commercial quantity', therefore, in view of the provisions of Section 37 NDPS Act, the petitioner is not entitled to the grant of regular bail. He further submitted that the petitioner is also involved in another case registered under the NDPS Act and in case, he is released on bail, there is every possibility that he may indulge himself in similar offence.

6. I have heard the learned counsel for the parties and perused the record.

7. It is not the case of the petitioner that he has been falsely implicated in the present case on account of any enmity with the police officials. There is nothing on record to suggest that as to why the police officials were inimical towards the petitioner.

8. Undisputably, the extent of intoxicating tablets effected in the present case falls under the 'commercial quantity'. Bar as laid down under Section 37 NDPS Act is clearly attracted. Power to grant bail under Section 439 Cr.P.C. is subject to the conditions laid down in Section 37 NDPS Act, which commences with non-obstante clause.

The Court is required to see as to whether there are any reasonable

ground to believe that the accused has not committed the offence and whether he is likely to commit any offence while on bail. This Court is satisfied that these conditions are not satisfied. The liberal approach in granting bail in cases under the NDPS Act, is uncalled for. The arguments of learned counsel for the petitioner regarding non-compliance of the procedure and instructions, would remain subject matter of trial as has been held by the Hon'ble Supreme Court ***in Union of India NCB, Lucknow Vs. Md. Nawaz Khan (2021) 10 SCC 100.***

9. Furthermore, the Hon'ble Supreme Court, in ***Criminal Appeal No.1001-1002 of 2022, titled as Narcotics Control Bureau Vs. Mohit Aggarwal, decided on 19.07.2022***, has held that length of period of custody of the accused or the fact that the charge-sheet has been filed and the trial has commenced are by themselves not considerations that can be treated as persuasive grounds for granting relief to the accused under Section 37 NDPS Act.

10. Moreover, the petitioner is also involved in another case of similar nature. It also shows that he has the tendency of committing repeated crime(s) of similar nature. It is not denied for a moment that the period of custody is a relevant factor, but simultaneously the totality of the circumstances and the criminal antecedents are also to be weighed.

11. Keeping in view the criminal antecedents of the petitioner, custody period of the petitioner, in the opinion of this Court, melts into insignificance. Still further, having had his complicity in the repeated offence of similar nature, the petitioner cannot seek the concession of

CRM-M-28991 of 2023

2023:PHHC:122219

regular bail, which of course, if granted would pave a way to him to involve himself in another similar offence.

12. Considering the same, at this stage, no justifiable ground is made out to extend the concession of regular bail to the petitioner. Consequently, the present petition stands dismissed.

15.09.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No