

CRM-M-38094 of 2022

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

CRM-M-38094 of 2022
Reserved on: 31.01.2023
Date of Pronouncement: 20.02.2023

Gurpreet Singh @ Gopi

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: -Mr. A.S. Brar, Advocate,
for the petitioner.

Mr. Anup Singh, AAG, Punjab.

NAMIT KUMAR, J.

This petition has been filed by the petitioner under Section 439 Cr.P.C. seeking regular bail in case FIR No.51 dated 07.05.2022 under Section 22(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the NDPS Act'), registered at Police Station Badhni Kalan, District Moga.

FIR in the present case was registered by the police on the allegations that the police party headed by ASI Kuldeep Singh was going from Chowki Area Lapon towards village Minian in connection with patrolling and checking of suspected person. When the police party reached near triangular of village Minia, one clean shaven person

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carrying a transparent polythene envelop was seen coming on foot and on seeing the police party, he tried to turn back and transparent polythene paper carried by him fell down on the earth and upon checking of polythene paper, recovery of 10 strips of intoxicant tablets Mark Etezola 0.5 mg each strip containing 10 tablets (total 100 tablets) was effected.

Pursuant to notice of motion, status report by way of affidavit of Manjit Singh, Deputy Superintendent of Police, Sub Division Nihal Singh Wala, District Moga, has been filed, which is already on record.

Learned counsel for the petitioner contended that the petitioner is innocent and has been falsely implicated in the present case. He further submitted that there is violation of Section 50 of the NDPS Act as no offer was ever given to the petitioner at the time of searching him for narcotics. He further submitted that it is highly improbable that one would smuggle psychotropic substance in transparent polythene bag making it visible to everyone. He further submitted that petitioner is in custody for the last 08 months and 25 days. He further submitted that investigation in the present case is complete; challan has been presented; charges have been presented and there are total ten prosecution witnesses and none has been examined as yet. Now the case is fixed for 09.02.2023 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

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concession of regular bail. In support of his contentions, learned counsel for the petitioner placed reliance on the judgments of this Court in ***Binder Kaur @ Goga v. State of Punjab, (2021) 3 RCR (Criminal) 360; CRM-M-47343 of 2019 – Dharminder Singh v. State of Punjab decided on 18.03.2021*** and ***CRM-M-51692 of 2021 – Jaswant Singh @ Nanni v. State of Punjab decided on 13.09.2022***.

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 contraband has not been effected from the personal search of the petitioner hence provisions of Section 50 of the NDPS Act are not attracted. However, he does not deny the fact that petitioner is in custody for the last 08 months and 25 days. He further submitted that recovered contraband falls under the category of ‘commercial quantity’, therefore, in view of the provisions of Section 37 of the NDPS Act petitioner is not entitled to the grant of regular bail.

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

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. The police officials apprehended the petitioner in discharge of their duties. So far as the contention of the learned counsel for the petitioner that it is highly improbable that one would smuggle psychotropic substance in

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transparent polythene bag making it visible to everyone is concerned, it can be seen from another angle also that the petitioner-accused can be clever enough by carrying the contraband in transparent bag in order to hide the same from public and police officials.

In *CRM-M-21130 of 2020 – Kuldeep Singh v. State of Punjab decided on 01.10.2021*, a Co-ordinate Bench of this Court has rejected the similar plea. Therefore, the judgments relied upon by learned counsel for the petitioner are not applicable to the facts and circumstances of the present case as in the said judgments no law has been laid down to the effect that if the contraband is recovered from a transparent polythene bag it has to be concluded that the accused has been falsely implicated.

Heavy recovery of contraband has been made from the polythene bag which the petitioner was carrying while he was caught red-handed. Petitioner has not given any explanation for the commercial quantity of contraband. Bar as laid down under Section 37 of the NDPS Act is clearly attracted. Power to grant bail under Section 439 of the Code is subject to the conditions laid down in Section 37 of the NDPS Act, which commences with non-obstante clause. The Court is required to see as to whether there are any reasonable grounds 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 arguments of the counsel for the petitioner regarding non-compliance of the procedure and instructions, would remain subject matter of trial as has been held by

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the Supreme Court in *Union of India through NCB, Lucknow Vs. Md.Nawaz Khan (2021) 10 SCC 100*.

Keeping in view the totality of the facts and circumstances as well as the fact that petitioner is named in the FIR, the quantity of contraband recovered from the petitioner falls under the category of ‘commercial quantity’ and was caught red-handed at the spot, stringent provision of Section 37 and presumption under Section 54 of the NDPS Act, this Court does not deem it fit to grant regular bail to the petitioner.

In view of the above, petitioner is not entitled to grant of regular bail. Hence, the present petition is dismissed.

20.02.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether Reportable

:

Yes/No