

201 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-33319-2023

Date of Decision: 12.09.2023

Gamdur Singh

...Petitioner

VERSUS

State of UT Chandigarh

...Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK MANCHANDA.

Present: Mr. Parminder Singh Sekhon, Advocate for the petitioner.
Mr. Shashank Bhandari, Addl. PP for UT Chandigarh
along with ASI Rajesh Kumar, Police Station District
Crime Cell, Chandigarh.

DEEPAK MANCHANDA, J.(ORAL)

Prayer in the third petition filed under Section 439 of the Cr.P.C., is for grant of regular bail to the petitioner pending trial in case FIR No.11 dated 15.01.2022, under Section 18 of the NDPS Act, 1985, (Section 21 of the NDPS Act, 1985, added at the time of framing of charges), Police Station South Sector-34, Chandigarh.

Learned counsel for the petitioner submits that the earlier two bail applications were filed by the petitioner, one vide CRM-M-48842-2022, which was dismissed as withdrawn vide order dated 20.3.2023 (Annexure P-6). The second bail application was filed vide CRM-22426-2023 ,where an interim bail of 10 days vide order dated 4.5.2023 (Annexure P-7) to attend the last rites of his son was granted, and after completion of said period, petitioner surrendered, and now present third bail application is

being filed keeping in view the long incarceration and since there is no progress in trial.

As per the prosecution story on 15.01.2022, the police party was on patrol duty and reached at Community Center, Sector 45-C, Chandigarh at about 08:00 p.m., near T-point Sector-45, where one person on seeing the police party, turned back and started walking in a haste manner. Thereupon, the police party on the basis of suspicion, chased him and on being apprehended, the said person tried to throw away the polythene bag which he was carrying in the right pocket of his kurta, but he was restrained from doing so. On being asked to open the same, 300 gms of opium was recovered from the same.

Learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case as no such recovery was ever effected from the conscious possession of the petitioner. Learned counsel further contends that although as per prosecution story 300 grams of opium was allegedly recovered from the petitioner, but as per the report of chemical examiner, the alleged contraband is mixture of various substances, therefore, the quantity of opium in the recovered contraband is a debatable issue during the course of trial and to support his contentions, learned counsel for the petitioner relies upon the decision of the Hon'ble Supreme Court in ***State of Himachal Pradesh vs. Nirmal Kaur alias Nimmo and others 2023 (2) RCR (Criminal) 347.***

Learned counsel also contends that there is no other case registered against the petitioner under the NDPS Act, investigation is complete, challan stands presented, and charges have been framed.

Learned Addl. PP for UT Chandigarh, on instructions from ASI Rajesh Kumar, District Crime Cell, UT Chandigarh, contends that 300 gms mixture which was recovered from the petitioner falls under the commercial quantity and that in view of the gravity of the offence, the petitioner is not entitled to bail. He also contends that as per CFSL, Exhibit-1 is a Preparation containing Tramadol, Morphine, Codeine, Thebaine, Opium Derivatives and in said report contraband recovered from the possession of the petitioner is a preparation of above noted NDPS mentioned at Sr.No.238 ZH,77,28,120 of column no.1 of the table and the entire weight of the mixture is to be taken into consideration for determination of the quantity, however, submits that charges have been framed and out of 13 prosecution witnesses, only 2 witnesses have been examined.

I have heard learned counsel for the parties.

Admittedly, the petitioner was arrested in this case on 15.01.2022, who has no other case registered against him. Although charges have been framed against the petitioner, yet, out of thirteen witnesses only two witnesses have been examined so far. The alleged contraband is mixture of various substances, therefore, the quantity of recovered contraband itself is a debatable issue during the course of trial and the same is likely to take long time to conclude. Moreover, the prosecution has not raised any apprehension that in case the concession of bail is granted to the petitioner, he would hamper the course of free and fair trial.

Resultantly, without meaning any expression of opinion on the merits of the case, the petition is allowed and it is ordered that the petitioner

be released on regular bail subject to his furnishing requisite bail bonds/surety bonds to the satisfaction of the trial Court concerned on the following conditions:-

1. *he shall appear before the Court on each and every date of hearing;*
2. *he shall not give any threat or intimidation to the prosecution witnesses;*
3. *he shall not indulge in any criminal activity;*
4. *he shall not leave India without prior permission of the Court.*

In addition to that the trial Court may impose any term and condition found suitable to ensure that the petitioner does not abscond and interfere in the trial.

In case the petitioner violates any terms and conditions on which the bail has been granted to him, the prosecution would be entitled to apply for cancellation of his bail.

12.09.2023
raj.khurana

(DEEPAK MANCHANDA)
JUDGE

Whether Reportable : Yes/No

Whether Speaking/Reasoned : Yes/No