

2023:PHHC:055301

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

CRM-M-51748-2022

Date of Decision: 20.04.2023.

KRISHAN

... PETITIONER

VS.

STATE OF HARYANA

.. RESPONDENT

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present : Mr.Sunil Sihag, Advocate,
for the petitioner.

Mr. Surinder Kumar Dagar, DAG, Haryana.

VIVEK PURI, J.(ORAL)

1. The petitioner is seeking regular bail in the case bearing FIR No. 51 dated 13.02.2022 under Sections 20 and 29 of the NDPS Act registered at Police Station Badli, District Jhajjar.

2. Custody certificate has been placed on record.

3. Learned counsel for the petitioner contends that as per the allegations, 304.050 kg of ganja was recovered from a canter bearing registration No. UK-17CA-0272. It has been further submitted that the petitioner was only alleged to be standing near the vehicle and is not, in any manner, concerned with the canter or the contraband being carried therein. The petitioner is in custody for a period of 01 year, 02 months and 03 days and is stated to be involved in another complaint case under Section 138 of the Negotiable Instruments Act.

4. Learned State counsel has opposed the bail application on the score that the petitioner alongwith co-accused, namely, Mohsin Malik and Kamal @ Boga were named in the secret information and in pursuance thereof, recovery has been effected. The quantity of contraband recovered in

the instant case falls in the category of commercial quantity and stringent provisions of Section 37 of the NDPS Act come into play. Till date, out of 16, only 02 witnesses have been examined.

5. On a query, the learned State counsel has submitted that in fact, Nawab is the registered owner of the aforesaid canter and he had sold the same to Mohsin Malik in pursuance of an agreement. Both the other accused are witnesses to the agreement.

6. It may be mentioned here that the petitioner is not the owner of the vehicle from which the contraband has been recovered. Merely because the petitioner is a signatory to an agreement vide which, Mohsin Malik, co-accused, has purchased the vehicle from the registered owner, may not be termed to be a circumstance at this stage to construe that he is a party in transporting the contraband in the said vehicle. The petitioner is not involved in any other case under the NDPS Act. The petitioner was only standing near the stationary vehicle from which contraband has been recovered. The conscious possession of the petitioner will be a debatable and moot point during the course of trial. In such circumstances, the provisions of Section 37 of the NDPS Act can be relaxed. Till date, only 02 out of 16 witnesses have been examined. The conclusion of trial is likely to take some and no fruitful purpose would be served by detaining the petitioner in further custody.

7. In such circumstances, sufficient grounds are made out to extend the concession of bail to the petitioner. Accordingly, without making any observation on the merits of the case, the present petition is allowed and petitioner is ordered to be released on bail, subject to his furnishing bail/surety bonds to the satisfaction of concerned trial Court/Chief Judicial

Magistrate/Illaqa Magistrate/Duty Magistrate.

20.04.2023
smriti

(VIVEK PURI)
JUDGE

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