

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

222

CRM-M-53225-2022
Date of decision : 09.02.2023

Kazi

Petitioner

V/S

State of Haryana

Respondent

CORAM : HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr. Manish Soni, Advocate
for the petitioner.

Mr. Gaurav Bansal, Asstt. A.G., Haryana
for the respondent-State.

ASHOK KUMAR VERMA, J. (ORAL)

The petitioner has filed the present petition under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail in case FIR No.188 dated 26.05.2019 registered under Sections 18 and 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act') (to which Section 29 of the NDPS Act was added later on) at Police Station DLF Phase-1, Gurugram.

Reply dated 28.01.2023 by way of an affidavit of Sh. Vikas Kaushik, Assistant Commissioner of Police, DLF, Gurugram has already been filed in the Registry which is taken on record

Brief facts of the case are that on 26.05.2019, during patrolling duty, police party headed by ASI Gianender had seen 02 boys coming from the side of road along with bags on their shoulders and on seeing the police party, they tried to fled from the spot. 01 boy was apprehended on the spot whereas another boy ran away from the spot after throwing the bag carried by him on the road side. The

apprehended accused told his name as Patryk Dziwinski and from the bag carried by him 345 grams Opium was recovered whereas from the bag thrown by the other accused 4 kgs 285 grams Opium was recovered. On the basis of disclosure statement of Patryk Dziwinski, petitioner Kazi was implicated in the present case.

Learned counsel for petitioner submits that the petitioner has been falsely implicated in the present case on the basis of disclosure statements of co-accused Patryk Dziwinski which is a very weak type of evidence. The petitioner was not apprehended on the spot and nothing has been recovered from him. In fact, the petitioner who is resident of District Kullu, on the date of occurrence was at Himachal Pradesh and has unfortunately lost his Aadhar Card, Voter Card, ATM cards and Pan Card and regarding the same he had also lodged DDR No.214 dated 26.05.2019 at Police Post City District Bilaspur. The distance between Bilaspur and the place of occurrence i.e. DLF Gurugram is around 450 kms. by road and it would approximately take around 11-12 hours to reach at such a long distance. The provisions of Section 37(1)(b) of the NDPS act are not applicable in the present case as the alleged contraband recovered from the bag found from the road side and not from the conscious possession of the petitioner. In support of this arguments learned counsel for the petitioner has placed reliance upon the judgments passed by the Coordinate Benches of this Court in ***CRM-M-45698-2022 titled as 'Resham Singh Vs. State of Punjab' decided on 15.12.2022; CRM-M-6433-2018 titled as 'Pawan Kumar Vs. State of Punjab' decided on 23.02.2018; Gurdev Singh @ Baba***

Vs. State of Punjab : 2022(4) RCR (Criminal) 222 and Ajay Kumar @ Nannu Vs. State of Punjab : 2021(1) DC (Narcotics) 69.

Learned counsel for the petitioner further submits that the petitioner is in custody since 31.08.2022. The petitioner is not involved in any other case. Out of 13 prosecution witnesses, only 03 have been examined so far. The trial is likely to take long time. No useful purpose will be served by further detention of the petitioner in custody. Therefore, the petitioner may be released on regular bail.

Per contra, learned State counsel has vehemently opposed the present petition on the ground that the huge quantity of 4 kgs 285 grams Opium was recovered from the bag thrown by the petitioner and the alleged quantity falls in the category of commercial quantity. On checking of the bag thrown by the petitioner, identity card in the name of the petitioner was also recovered. In his disclosure statement co-accused Patryk Dziwinski has specifically named the petitioner as the co-accused fled from the spot. The plea of alibi taken by the petitioner is just an afterthought which should be considered at the time of trial. Therefore, the present petition may be dismissed.

I have heard learned counsel for the parties and gone through the paper-book.

As per the prosecution version, on 26.05.2019 when the police party headed by ASI Gianender doing patrolling duty at Qutub Plaza Market, Phase-1, Gurugram, they saw 02 boys coming from the side of road along with bags on their shoulders. On seeing the police party, they tried to fled from the spot. When the police moved towards them, one boy threw the bag on the other side of the road and ran away

from the spot whereas the other boy apprehended along with the bag. The apprehended boy told his name as Patryk Dziwinski r/o Poland and on asking about the boy who ran away then he told his name as Kazi (the petitioner) r/o Kullu Himachal. On checking, 345 grams Opium was recovered from the bag carried by Patryk Dziwinski and from the bag thrown by the other boy 4 kgs 285 grams Opium and a identity card in the name of Kazi (the petitioner) s/o Ghembu Ram r/o Village Nashala, Kullu, Himachal Pradesh were recovered. During investigation, non-bailable warrants of arrest of the petitioner were obtained by the police and the raid was conducted to apprehend him. The petitioner was arrested from Kullu on 31.08.2022. His disclosure statement was recorded and he also got demarcated the place of occurrence.

The allegations against the petitioner are very serious in nature which needs no leniency at this stage. The drug peddlers have successfully destroyed the social fabric of our society and led youth to the wrongful path. Such type of persons need to be dealt with firmly and sternly and no sympathy can be shown to them lest that should prove to be counter productive and result in increased drug trafficking. Hon'ble Supreme Court in its judgment passed in ***Union of India Vs. Ram Samujh : 1999(4) RCR (Criminal) 93*** has observed as under:-

“7. It is to be borne in mind that the aforesaid legislative mandate is required to be adhered and followed. It should be borne in mind that in murder case, accused commits murder of one or two persons, while those persons who are dealing in narcotic drugs are instruments in causing death or in inflicting death blow to number of innocent young victims, who are vulnerable; it causes deleterious effects

*and deadly impact on the society; they are a hazard to the society; even if they are released temporarily, in all probability, they would continue their nefarious activities of trafficking and/or dealing in intoxicants clandestinely. Reason may be large stake and illegal profit involved. This Court, dealing with the contention with regard to punishment under Narcotic Drugs And Psychotropic Substances Act, has succinctly observed about the adverse effect of such activities in **Durand Didier v. Chief Secretary, Union Territory of Goa , 1989(2) RCR (Crimina l) 505 : 1990(1) SCC 95** as under :-*

"With deep concern, we may point out that the organised activities of the underworld and the clandestine smuggling of narcotic drugs and psychotropic substances into this country and illegal trafficking in such drugs and substances have led to drug addiction among a sizable section of the public, particularly the adolescents and students of both sexes and the menace has assumed serious and alarming proportion in the recent years. Therefore, in order to effectively control and eradicate this proliferating and booming devastating menace, causing deleterious effects and deadly impact on the society as a whole, the Parliament in the wisdom has made effective provisions by introducing this Act 81 of 1995 specifying mandatory minimum imprisonment and fine."

So far as the arguments of learned counsel for the petitioner that the provisions of Section 37(1)(b) of the NDPS act are not applicable in the present case as the alleged contraband recovered from the bag found from the road side and not from the conscious possession of the petitioner is concerned, the petitioner was specifically named and identified by co-accused Patryk Dziwinski as his co-accused and from the bag which was found from the road side ID card of petitioner was also found. Therefore, the judgments relied upon by learned counsel for the petitioner are not applicable in the present case.

Without commenting anything on the merits of the case lest it may prejudice the outcome of the trial but taking into consideration

the facts that the petitioner was identified by co-accused Patryk Dziwinski, from the bag ID Card of petitioner was also found and the fact that alleged contraband recovered from the bag falls in the category of 'commercial quantity' which attracts rigors of Section 37(1)(b) of the NDPS Act, I am of the considered view that the petitioner does not deserve the concession of regular bail.

The present petition is dismissed accordingly.

09.02.2023

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(ASHOK KUMAR VERMA)

JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No