

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

CRM-M-61111-2022

Date of decision : 10.01.2023

Mahinder Kumar alias M.P.

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Rhythem Bajaj, Advocate
for the petitioner.

Mr. Sehajbir S. Aulakh, Asstt. Advocate General, Punjab.

PANKAJ JAIN, J. (ORAL)

This petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case F.I.R. No.38 dated 08.04.2022 registered for the offence punishable under Section 22 of Narcotic Drugs and Psychotropic Substance Act, 1985 (for short, 'the NDPS Act') at Police Station Khuian Sarwar, District Fazilka.

2. As per the case of the prosecution it has been claimed that :-

“Today myself ASI alongwith HC Sunil Kumar 113/F2K, CT Harpreet Singh 330/F2K in Government vehicle Bolero bearing no.PB-22-K- which was driven by SC Robin Kumar 9056, which 806/FZK were present at Bus Stand Kallar Khera for patrolling and checking of anti social elements then a Special informer informed me that Mahinder Kumar alias M.P. son of Manphul Ram resident of village Jandwala Hanuwanta who is indulging in selling the intoxicant bottles and tablets, who has to come from his village on his Platina motorcycle, black colour, without number to link road and Kallar Khera. f nakabandi be erected at

suitable place then Mahinder Kumar can be apprehended alongwith the above intoxicant bottles and tablets. Information being reliable and authentic to do this by Mr.Mahinder Kumar fulfil the offence under section 22/61/85 of NDPS Act. Therefore, ruga on above offences against Mr.Mahinder Kumar above said is written and for registration of case is being sent through Constable Harpreet Singh 330/FZK to the police station. After registration of case FIR number be intimated. Special reports be issued. PCR Fazilka be informed, competent officer be sent to the spot informed the further inquiry. I have Halqa Officer. Myself ASI alongwith police employee departed to the place disclosed by the informer for nakabandi. Sd/- Beerbal Singh ASI Police Station Khuian Sarvar dated 08.04.2022 in the area of Bus Stand Kallar Khera at 5:15 PM. Today on receipt of above ruga at Police Station above case on above offences against above accused have been registered, original ruga alongwith FIR is being sent through CT ASI at the spot. For further necessary action ASI 679/Fazilka, Incharge Chowki Police Station Khuian Sarvar, Davinder Singh Color Khera, have already informed on telephone and instructions have been issued that by making liaison with ASI Birbal Singh 291/FZK, Police Station Khuian Sarvar reached at the spot. Special Reports have been prepared and are being sent through CT Surinder Kumar 1189/Fazilka to the Illaga Magistrate and Senior Officers. PCR Fazilka is being informed.”

3. Ld. Counsel for the petitioner submits that the petitioner was earlier released on interim bail and is not reported to have misused the said concession. Even though the quantity of the contraband recovered is of commercial nature as per the notification issued by the Government of India under the NDPS Act yet the petitioner is first time offender and there is no other case pending against him under the NDPS Act. He further submits

that the report under Section 173(3) Cr.P.C. already stands submitted and most of the witnesses are official witnesses and, thus, there can't be any apprehension that the petitioner shall tamper with the evidence.

4. Per contra, State Counsel submits that the petitioner is a habitual offender and is facing prosecution in another criminal case though he does not dispute that there is no other case pending against the petitioner under the NDPS Act.

5. I have heard counsel for the parties and have gone through the records of the case.

6. Counsel for the petitioner does not deny the fact that as per the allegations levelled against the petitioner, rigors of Section 37 of the NDPS Act will be attracted. He has not been able to point out any violation of the mandatory provision on the basis of which finding w.r.t. possibility of the petitioner to earn acquittal can be recorded at this stage.

7. Thus, keeping in view the contours of Section 37 and allegations levelled against the petitioner, no ground for grant of regular bail is made out.

8. Accordingly the petition stands dismissed.

January 10, 2023
Dpr

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

