

2024:PHHC:092960



IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

216

CRM-M-19286-2024 (O&M)
Date of decision: 24.07.2024

Ravi Kumar ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Satnam Singh Gill, Advocate
for the petitioner.

Mr. A. S. Samra, AAG, Punjab.

MANISHA BATRA, J. (Oral)

1. Prayer in this petition, filed under Section 439 Cr.P.C., is for grant of regular bail to the petitioner in FIR No. 78 dated 28.06.2023, registered under Sections 20 and 29 of the NDPS Act, 1985 at Police Station City Dhuri, District Sangrur.
2. Brief facts of the case relevant for the disposal of the present petition are that on 28.06.2023, ASI Pinjore Singh, who was on patrolling duty along with other police officials, received a secret information that petitioner Ravi Kumar is a habitual in selling sulfa/ganja and that he was bringing the same from outside and was coming from the side of Dohla railway crossing. If a barrier is laid, he can be apprehended along with the contraband. Believing the information to be true, a *ruqa* was sent to the police station in this regard for registration of the FIR. A second

2024:PHHC:092960



Investigating Officer i.e. SI Kiranjit Kaur was sent at the spot. The petitioner was seen coming from the railway crossing side, who on seeing the police party got perplexed and threw a transparent polythene, which he was holding in his left hand, into the bushes and tried to turn backward but he was apprehended by the police party. On interrogation, he disclosed his name as 'Ravi Kumar'. From the said polythene bag, 2300 grams of charas/ganja was recovered. During investigation, he suffered disclosure statement that the alleged contraband was purchased by him from co-accused Rajji for Rs. 30,000/- and the same was to be sold for Rs. 45,000/-. The sample parcel of the contraband was sent to FSL, Mohali on 04.07.2023. After completion of necessary investigation and usual formalities, *challan* under Section 173 Cr.P.C. was presented and presently, the petitioner is facing trial for commission of aforementioned offences. He had moved an application for grant of regular bail before the trial Court but the same had been dismissed, vide order dated 12.09.2023.

3. Learned counsel for the petitioner has argued that he has been falsely implicated in this case. The petitioner is in judicial custody since 28.06.2023. The recovery of the alleged contraband was not effected from the conscious possession of the petitioner. There was non-compliance of the provisions of Section 42 of the Act as the secret information was not reduced in writing and was not forwarded to the senior police officials immediately from the spot. Even there was non-compliance of the provisions of Section 50 of the Act. The story put-forth by the prosecution is highly improbable as a person will never carry any narcotic substance in a transparent polythene.

The investigation has since been completed and *challan* has been presented.

2024:PHHC:092960



The trial is likely to take a long time. Therefore, it is urged that the petition deserves to be allowed and the petitioner deserves to be granted benefit of regular bail. Learned counsel for the petitioner has relied upon the decisions of this Court rendered in ***Balwinder Singh vs. State of Punjab, CRM-M-16150-2021***, decided on 19.07.2021 and ***Manjit Singh vs. State of Punjab, CRM-M-33733-2020***, decided on 15.03.2021 as well as upon ***Ravi Kumar vs. State of PUnjab : 2019 (4) RCR (Criminal) 714***. In ***Balwinder Singh's*** case (supra), the accused was granted regular bail by this Court in the case involving recovery of commercial quantity by observing that since the recovery of intoxicant injections was allegedly made from a polythene bag thrown on the road side, it will be a debatable question as to whether the petitioner can be said to be in conscious possession of the recovered contraband.

4. *Per contra*, learned State counsel, on the basis of the status report, has vehemently argued that the petitioner is not entitled to get benefit of bail as a commercial quantity of the contraband was recovered from him. He was nabbed at the spot. His story regarding false implication and plantation of the recovered contraband is concocted one. The rigors of Section 37 of the Act are attracted in this case. The trial may be expedited. Hence, it is urged that the petition is liable to be dismissed.

5. I have learned counsel for the parties at considerable length and have also perused the material placed on record.

6. As per allegations in the FIR, on receipt of a secret information that the petitioner is indulged in selling contraband and was coming with the same, a barrier was laid and he was seen coming from the opposite side

2024:PHHC:092960



holding a transparent polythene bag in his left hand. On seeing the police party, he got perplexed and threw the said bag into bushes, from which, the alleged recovery of contraband was effected by the police, which falls under the commercial quantity. Therefore, the rigors of Section 37 of the Act would certainly be attracted to this case. The question that the recovery was not effected from the conscious possession of the petitioner cannot be looked into at this stage while deciding an application filed under Section 439 of Cr.P.C. A perusal of the custody certificate reveals that the petitioner is involved in one more FIR registered under Section 376 of IPC, which shows that the petitioner is a criminal minded person and if extended benefit of bail, there are chances of his committing similar offences under the NDPS Act. Keeping in view the seriousness of the allegations as levelled against him, the quantity of the recovered contraband, the quantum of sentence which the conviction may entail and the attendant facts and circumstances of the case, this Court is of the considered opinion that the petitioner is not entitled to get benefit of regular bail, at this stage. Hence, the petition is dismissed.

7. It is made clear that any observation made herein above is only for the purpose of deciding the present petition and the same shall have no bearing on the merits of the case.

24.07.2024
Waseem Ansari

(MANISHA BATRA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>