



CRM-M-51153-2024

209

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-51153-2024

Date of Decision: 29.11.2024

Parbal @ Parbal Tiwari

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present:-. Mr. Sandeep Kumar Yadav, Advocate
for the petitioner

Mr. Gaurav Bansal, DAG Haryana

KIRTI SINGH, J.(Oral)

The jurisdiction of this Court under Section 483 of BNSS, 2023 has been invoked for grant of regular bail to the petitioner in case FIR No.69 dated 26.03.2024 registered under Sections 21, 29 and 58(2) of NDPS Act and Sections 195 and 120-B of IPC at Police Station City Mahendergarh, District Mahendergarh, Haryana.

2. The contents of the above-mentioned FIR are reproduced herein below:-

"To, The SHO, Police Station City Mahendergarh. Jai Hind. Today I the ASI Sanjit No. 627/NNL along with HC Sandeep 605/NNL, CT Jasbir No. 592/NNL boarding private vehicle driver EHC Dhiraj No. 727/NNL in connection of Patrolling and investigation of crime was present at Satnali Turn Mahendargarh, that special informer met and gave information according to appearance that Chirag son of Virender Resident of Dhani Mohalla police station Mahendargarh who is running trade of selling Smack, today also in front of Court Complex is carrying Intoxicated substance Smack in his Motorcycle HR 34G 8818, if raid may be conducted immediately then he can be



nabbed at the spot along with Smack, that while considering this information as true notice was prepared under section 42 NDPS Act, you were apprised about this information, that myself ASI has prepared raiding party and commuters were requested to join raiding party then everyone expressed their genuine compulsion went from the spot without disclosing their names. Myself ASI conducted raid at the place told by the informer then a person was seen standing near Motorcycle No. HR 34G 8818. Who was nabbed with the help of fellow employees and his named was asked, he disclosed his name as Chirag son of Virender Resident of Dhani Mohalla Police Station City Mahendargarh. A notice under section 50 NDPS was prepared and served to Chirag and read over and explained to him, Who upon accepting the notice as correct appended his signatures underneath the notice and himself recorded reply to the notice that I want to get my search be conducted in presence of some Duty Magistrate, underneath the notice and reply suspect and witnesses appendec their respective signatures. Myself ASI informed Duty Magistrate Sh. Vikrant Yadav from my Mobile No. 9817239699 to Shri Vikrant Yadav ETO Narnaul upon his mobile NO. 8930989313 and requested him to come to the spot, that after some time Duty Magistrate along with his assistant staff come present at the spot, who asked HC Sandeep 605 to conduct search of myself ASI, that during personal search of the officer no recovery could be effected which could be taken into police custody. Then Duty Magistrate in his presence myself ASI conducted search of Motorcycle of suspect Chirag. During search of the Motorcycle underneath its seat red coloured substance was recovered in white wrapper. That myself ASI sniffed recovered substance and according to my experience it was found as Smack For recovered Smack when License and Permit was demanded from the accused then he could not produced any License or permit. Recovered Smack was weighed in computerized weighing scale then total weight of the same along with wrapper comes out as 8 Gram 63 Milligram. Parcel of recovered Smack was prepared and the parcel was sealed with seal SK/1, Duty Magistrate sealed it with his seal GS/1 and seal after use was handed over to HC Sandeep 605. Parcel of case property and Motorcycle HR 34G 8818 make HONDA New Dream black coloured was taken into police custody. Upon all the memos, accused witnesses and Duty Magistrate appended their respective signatures. Accused Chirag above named by keeping recovered 8 Gram 63 Milligram of Smack underneath the seat of the Motorcycle without License or Permit have committed an offence under section 21-61-85 of NDPS Act, so statement for registration of case is being sent by hand through C Jasbir to Police Station. After registration of case number of the FIR may be informed and special reports may be apprised to senior officers. At the spot second Investigation Officer may be sent for further investigation. Myself ASI am busy at the spot. Today in front of Court complex, On Road, Mahendergarh. SD/ Sanjeet CIA, M.Garh. dt 26-03-2024. Mob 9817239699. AADHAR NO. 537744785847 AT 2.15 PM.XXXX.”

**CRM-M-51153-2024**

3. Learned counsels for the petitioner submits that the allegations against the petitioner are that the petitioner along with the co-accused planted 8.63 gms of smack to falsely implicate a person, namely Chirag. The petitioner has been falsely implicated in the present case. The petitioner has been nominated on the basis of disclosure statement and nothing has been recovered from the petitioner and the alleged recovery of 8.63 gms of smack is non-commercial quantity. No direct evidence is there against the petitioner and as far as disclosure statement is concerned, the same would be a subject matter of consideration during trial, which would certainly not conclude very soon. Learned counsel for the petitioner submits that the petitioner has undergone actual custody of 02 months and 22 days and there is no other case pending against him.

4. Per contra, learned State counsel has vehemently opposed the submissions made by the learned counsel for the petitioner. As per the custody certificate, the petitioner has undergone actual custody of 02 months and 22 days and there is no other case pending against him. He further on instructions submits that the challan was presented on 30.10.2024 and out of 24 prosecution witnesses, none has been examined till date. However, in view of the serious allegations against the petitioner, he is not entitled to the concession of regular bail.

5. Heard the rival submissions made by learned counsel for the parties.

6. The veracity of the allegations leveled against the petitioner shall be established during the course of the trial. Admittedly, the petitioner has undergone actual custody of 02 months and 22 days and there is no other case pending against him. Out of total of 24 prosecution witness, none has been examined till date, therefore, this Court is of the view that further incarceration of the petitioner would not serve any purpose.

**CRM-M-51153-2024**

7. Without commenting anything on the merits of the case, lest it may prejudice the trial, the present petition is allowed and the petitioner is ordered to be released on regular bail on his furnishing adequate bail/surety bonds to the satisfaction of the concerned learned trial Court/Duty Magistrate. The petitioner shall also abide by the following conditions:-

- (i) The petitioner will not tamper with the evidence during the trial.
- (ii) The petitioner will not pressurize/intimidate the prosecution witness(s).
- (iii) The petitioner will appear before the trial Court on the date fixed, unless personal presence is exempted.
- (iv) The petitioner shall not commit an offence similar to the offence of which they are accused of, or for commission of which he is suspected.
- (v) The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

8. In case of breach of any of the above conditions, the prosecution shall be at liberty to move an application for cancellation of bail before this Court.

9. However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial Court would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

29.11.2024

reena

**(KIRTI SINGH)
JUDGE**

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No