

CRM-M-56411-2023
Date of decision: 12.01.2024

...PETITIONER

V/S

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sarthak Dubey, Advocate and
Mr. Vaibhav Goel, Advocate with
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR J. (ORAL)

This is the first petition filed under Section 439 of Code of Criminal Procedure, 1973 with the prayer for the grant of regular bail to the petitioner in case FIR No.534 dated 24.12.2022 registered under Section 20(b)(ii)(C) of NDPS Act, 1985 registered at Police Station Bilaspur, District Gurugram, Haryana.

2. The present FIR was lodged on the allegations that a secret information was received that the petitioner was found travelling in an Alto Car, who disclosed his identity as Kuldeep Singh. A suspicious plastic bag was found behind the driver seat and another bag was found in the trunk of the vehicle. On being confronted, the petitioner informed that these plastic bag contain *Ganja*, in pursuance to which, ACP East, Gurugram was called at the spot and notice under Section 50 of the NDPS Act was also prepared and the petitioner was found in conscious possession of 32.784 grams of *Ganja*.

3. Learned counsel for the petitioner *inter alia* contends that

petitioner has no concern with the vehicle as he is not the owner of the Alto Car. Moreover, the perusal of the FIR indicates that it was registered vide General Diary No.003 dated 24.12.2022 at 3:51 hours and he has drawn the attention of this Court to Annexure P-6, the gist of the final report, which indicates that the investigating officer has recorded of the reporting as 3:10 AM. The notice under Section 50 of NDPS Act also mentions the Sections under which the FIR is lodged before even making the recovery of the contraband. Notice under Section 42 of NDPS contraband Ganja or the Section invoking the provisions of the NDPS has also been mentioned and it is not explained how the investigating officer came to the conclusion that the contraband which is yet to be recovered would contain *Ganja* to attract Section 20 of the NDPS Act and also, without weighing the contraband, a conclusion has been drawn that the contraband would fall under the ambit of commercial quantity. Learned counsel contends that the mandatory provisions as contained in Sections 50 and 42 of the NDPS Act have not been followed, which has caused great prejudice to the petitioner and as such, it would violate the fundamental rights of the petitioner enshrined under Article 21 of the Constitution of India. The concerned officer does not even belong to the police station under which, the FIR (supra) has been lodged. The learned counsel for the petitioner has relied upon the judgment dated 28.05.2019 passed by this Court passed in ***Joginder Singh Vs. State of Punjab*** bearing ***CRM-M No.5074 of 2019*** and further, the petitioner has suffered incarceration for more than one year and the trial of the case is progressing at a snail's pace and the petitioner is having clean antecedents as he is not involved in any other case.

4. Per contra, the learned State counsel opposes the prayer of grant of regular bail to the petitioner, on the ground that the arguments advanced by

learned counsel for the petitioner are required to be rejected only on the ground

that the perusal of the FIR itself would show that the petitioner himself has informed the arresting officer that two plastic bags recovered from the car contain *Ganja*. As such, only on his disclosure statement, the particular Section of NDPS Act was mentioned on the notice under Section 50 of the NDPS Act. Moreover, the trial Court has made substantial progress as out of 14 witnesses cited by the prosecution 05 witnesses have been examined and the trial of the case is likely to conclude soon and the quantity involved in the present case is of commercial nature. As such, it would attract the embargo contained in Section 37 of the NDPS Act and there is nothing to suggest that any deviation from the same can be made in the facts and circumstances of the case.

5. Having heard the learned counsel for the parties and after perusing the record of the case, this Court finds no ground for granting regular bail to the petitioner and cannot appreciate the probable defence set up by the petitioner in the present case. It is a matter of evidence which obviously had to be gone through by the learned trial Court.

6. In view of the above facts and circumstances, present petition stands dismissed.

7. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and the trial Court shall proceed without being prejudiced by observations of this Court.

January 12, 2024
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(HARPREET SINGH BRAR)
JUDGE

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| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |