

# Law Today Live Doc. Id. 15151

**PUNJAB AND HARYANA HIGH COURT**

**Before: Arun Kumar Tyagi, J.**

CRM-M-16440-2020 (O & M)

Decided on: 13.07.2020

Sunil

Petitioner

Versus

State of Haryana

Respondent

Present:

Mr. Chand Ram Olla, Advocate for the petitioner.

Mr. Chetan Sharma, AAG, Haryana for the respondent-State.

**Code of Criminal Procedure, 1973 (2 of 1974), Section 439 -- Narcotic Drugs and Psychotropic Substances, Act, 1985 (61 of 1985), Section 21, 37 -- NDPS matter -- Commercial quantity -- Regular bail -- Recovery of heroin weighing 322 grams and 66 mili gram from two accused -- Disclosure statement implicating the petitioner as the person from they borrowed the heroine -- Recovery of 53 grams 63 mili grams from petitioner -- Prima facie, due to inadmissibility of disclosure statements of co-accused in evidence against the petitioner, the petitioner cannot be said to be in conscious possession of commercial quantity of heroin allegedly recovered from his co-accused and Section 37(1)(b) of the NDPS Act will not be applicable qua the petitioner -- Petition allowed, the petitioner is ordered to be released on bail.**

**(Para 9)**

**ARUN KUMAR TYAGI, J. (ORAL) –**

1. The case has been taken up for hearing through video conferencing.

**CRM-14322-2020**

2. Prayer in the application filed under Section 482 of the Code of Criminal Procedure, 1973 is for exemption from filing the typed/certified copies of Annexures P-1 and P-2.

3. In view of the reasons mentioned in the application, the same is allowed and the petitioner is exempted from filing the typed/certified copies of Annexures P-1 and P-2.

**Main case**

4. The petitioner has filed the present (first) petition under Section 439 of the Code of Criminal Procedure, 1973 (for short, "the Cr.P.C.") for grant of regular bail in case FIR No.283 dated 24.05.2020 registered under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "the NDPS Act") at Police Station Urban Estate Hisar, District Hisar to which Section 61 of the NDPS Act was added later on.

5. As per the prosecution version, on 24.05.2020 the police party overpowered motorcycle riders Sukhwinder Singh @ Sukha and Krishna @ Kukki on the basis of secret information and recovered heroin weighing 322

grams 66 mili grams from their possession. During interrogation, the above said accused made statement implicating the petitioner as the person from whom they had borrowed the above said heroin. The petitioner was apprehended and recovery of 53 grams 63 mili grams was made from his possession.

6. The petitioner, being in custody since the date of his arrest, has filed the present petition for grant of regular bail which is opposed by learned State Counsel.

7. I have heard learned counsel for the petitioner and learned State counsel and gone through the relevant record.

8. Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in the case. The mandatory provisions of the NDPS Act were not complied with. The petitioner cannot be said to be in conscious possession of heroin recovered from co-accused Sukhwinder Singh @ Sukha and Krishna @ Kukki. The disclosure statement of the co-accused is not admissible in evidence qua the petitioner. The rigors of Section 37(1)(b) of the NDPS Act are not applicable qua him. The trial is likely to take long time and no purpose will be served by further detention of the petitioner in custody. The petitioner is not involved in any other case under the NDPS Act. Therefore, the petitioner may be granted regular bail.

9. On the other hand, learned State counsel has submitted that the petitioner was the supplier of commercial quantity of heroin recovered from co-accused Sukhwinder Singh @ Sukha and Krishna @ Kukki and recovery of 53 grams 63 mili grams of heroin was also made from his possession. The petitioner does not deserve grant of concession of regular bail. Therefore, the petition may be dismissed.

10. Prima facie, due to inadmissibility of disclosure statements of co-accused in evidence against the petitioner, the petitioner cannot be said to be in conscious possession of commercial quantity of heroin allegedly recovered from his co-accused and Section 37(1)(b) of the NDPS Act will not be applicable qua the petitioner.

11. Keeping in view the facts and circumstances of the case, nature of accusation and evidence against the petitioner as to recovery of non-commercial quantity of contraband from his possession and the fact that the trial is likely to take long time but without meaning to comment on merits, I am of the considered view that the petitioner deserves the concession of regular bail.

12. Therefore, the petition is allowed and the petitioner is ordered to be released on bail on furnishing of requisite bail bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

13. However, the petitioner is granted regular bail subject to the condition that he shall not commit any similar offence and in case of commission of similar offence by him in future his bail in the present case shall also be liable to be cancelled on application to be filed by the prosecution in this regard.

**Petition allowed.**

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