

In the Court of Mrs. Anjana, Judge, Special Court,
Moga.

CIS No.BA/1602/2020
CNR No.PBMO01003358-2020
Date of Decision: 13.11.2020

State of Punjab

Versus

Varinder Singh alias Bindu son of Visakha Singh resident of Patti Badhu,
Village Maliana, District Moga.

....Accused/Applicant

FIR No.88 dated 13.09.2017,
Under sections 22/29 of NDPS Act,
P.S. Badhnikalan

(2nd Bail Application U/s 439 Cr.PC)

Present: Sh. Balwinder Singh Gill, Advocate, for applicant.
Mrs. Gunwantjit Manesh, Addl.PP for the State

ORDER

1. Virtual court room set up through Vidyo App. Learned Addl.PP for State is online from her office. This order of mine shall dispose of the bail 2nd application filed by the above referred applicant under section 439 Cr.P.C. in a case bearing FIR No.88 dated 13.09.2017 U/s 22-29-61-85 of NDPS Act, P.S. Badhnikalan, District Moga.
2. In pursuance of the notice of the bail application having been issued, learned Addl.P.P. for the State Mrs. Gunwantjit Manesh has put in appearance through video conferencing. Main file received and perused.
3. The learned counsel for the applicant/accused has vehemently argued that this is second bail application under section 439 Cr.P.C. of the applicant-accused as previous bail application of the applicant-accused was dismissed. However, applicant-accused was released on interim bail, but after receipt of chemical examiner report, applicant-accused was in

judicial custody. No recovery has been effected from the applicant-accused and same has been planted by the police upon the applicant-accused due to political party rivalry. The applicant-accused is suffering from Kala Pelia and HIV disease and proper treatment is not available at Modern Jail, Faridkot for such kinds disease. The applicant-accused has no concern whatsoever with the alleged recovery. The Mandatory provisions of NDPS Act has not complied with. The conclusion of trial will take a long time. No useful purpose would be served by detaining the applicant/accused further behind the bars. The accused/applicant will abide by all the terms and conditions as imposed by this court. Lastly, prayer has been made for acceptance of the bail application.

4. On the other hand, learned Addl.P.P. for the State vehemently opposed the contentions raised by the learned counsel for accused/applicant and argued that there are specific allegations against the accused/applicant. Thus, due to gravity and seriousness of offence, present accused/applicant does not deserve the concession of regular bail. Lastly, prayer has been made for dismissal of bail application.

5. After giving my careful and thoughtful consideration to the rival contentions and on careful perusal of averments of application, contents of FIR coupled with the duly assistance rendered, the Court is of the considered view that present bail application merits dismissal. From the perusal of file, it reveals that the present case was registered against the accused/applicant on the allegations that on 13.09.2017, in the area of P.S Badhnikalan, accused/applicant was found in possession of 280 grams intoxicant powder containing salt Alprazolam without any valid license. Perusal of file further reveals that initially, applicant-accused was released on interim bail vide order dated 13.12.2017 passed by learned Predecessor of this Court. However, on receipt of report of chemical examiner, the ingredients of the intoxicant powder are reported to be as Alprazolam and recovery of the same falls under the ambit of commercial quantity and the application of the accused-applicant for grant of regular bail was dismissed vide order dated 27.02.2018 passed by learned Predecessor of this Court on the ground that bar of section 37 of the Act gets attracted in

this case. Now, by way of present bail application, the accused/applicant has sought the interim bail on medical ground by stating that he is suffering from HIV Positive and in this regard, report from Medical Officer, Jail Hospital, Faridkot has also called. However, *in view of the minutes of meeting of the Higher Power Committee dated 02.05.2020 as held under the Chairmanship of Hon'ble Justice Sh.R.K.Jain, Hon'ble Punjab and Haryana High Court, in para No.12 (c), it is recommended that "For under trial prisoners in custody suffering from Chronic diseases and pre-existing condition, the Committee recommended that under-trial prisoners suffering from HIV disease and **where maximum prescribed sentence is upto 10 years may be released on interim bail.*** Moreover, in the present case, the accused/applicant has been charged for the offence under Section 22 of NDPS Act for having found in conscious possession of 280 grams intoxicant powder containing salt Alprazolam and same falls under the ambit of commercial quantity, whereas in Section 22 (c) of the NDPS Act, it has been specifically mentioned that *"where the contravention involves commercial quantity, with rigorous imprisonment for a term, **which shall not be less than ten years but which may extend to twenty years, and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees**".* Thus, keeping in view the aforesaid fact and circumstances that in the present case, maximum prescribed sentence is twenty years, this court does not find a fit case for according concession of interim bail on medical ground to the applicant. Therefore, the present bail application being bereft of any substance, is hereby dismissed. Papers be attached with main file.

Pronounced;
Dated: 13.11.2020
(Sunny Stenographer II)

(Anjana)
Judge, Special Court,
Moga. (UID No.PB-0448)

Present: Sh. B.S.Gill Advocate, for applicant
Mrs. Gunwanjit Manesh Addl.PP for the State

Report from the Medical Officer, Jail Hospital, Faridkot duly certified by SMO/CMO has been received and attached.

Main file received and perused. Arguments heard through video conference. Vide my separate order of even date, the present bail application stand dismissed, for the reasons as indicated therein. Papers be attached with main file.

Pronounced;
Dated: 13.11.2020
(Sunny Stenographer II)

(Anjana)
Judge, Special Court,
Moga. (***UID No.PB-0448***)