

(2014) 05 P&H CK 0506

High Court Of Punjab And Haryana At Chandigarh

Case No: CRM-M No. 1174 of 2014

Dilsher Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: May 13, 2014

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 439
- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 21, 61

Hon'ble Judges: Tejinder Singh Dhindsa, J

Bench: Single Bench

Advocate: Vijay Kumar Jindal, Advocate for the Appellant; K.S. Sidhu, Deputy Advocate General, Advocate for the Respondent

Final Decision: Allowed

Judgement

Tejinder Singh Dhindsa, J.

Reply on behalf of respondent-State has been filed in Court today and the same is taken on record. Copy already supplied.

2. This order shall dispose of the present petition filed u/s 439 Cr. P.C. seeking the benefit of regular bail pending trial in FIR No. 205 dated 6.11.2012 under Sections 21/61/85 of NDPS Act, registered at Police Station Jhabhal, Tarn Taran, District Tarn Taran.

3. The petitioner is facing trial for offence under the provisions of the NDPS Act on the ground of an alleged recovery of 260 gms. heroin has been effected from him.

4. Counsel for the parties have been heard.

5. Undisputedly the petitioner has been in custody since 06.11.2012. The alleged recovery of the contraband is marginally over and above the commercial quantity. That apart, the petitioner has raised the plea of being a juvenile by stating his date of birth to be 08.11.1994.

6. Learned State counsel would join issue as regards the status of the petitioner by submitting that the birth certificate of the petitioner during the course of investigation has been found to be false and forged. Be that as it may, the petitioner has also placed reliance upon his matriculation certificate in which learned State counsel would concede the contents thereof have been found to be correct.

7. Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 clearly stipulates the procedure to be followed in determination of age and mandates that in every case concerning a child or juvenile in conflict with law, the age determination inquiry would take into account the evidence by obtaining the matriculation or equivalent certificate and in the absence thereof, the date of birth certificate from the school first attended and even in the absence of such certificate, the birth certificate given by a Corporation or a Municipal Authority or a Panchayat.

8. In the facts of the present case, the particulars furnished in the matriculation certificate of the petitioner have been found to be correct by the investigating agency. The alleged recovery from the petitioner is stated to be of 6.11.2012 and in the eventuality of the petitioner being treated as a juvenile, he would be entitled to the beneficial provisions under the Juvenile Justice (Care and Protection of Children) Act, 2000 and a maximum sentence of 3 years can be imposed upon him. The petitioner has already suffered incarceration of a period in excess of one year and 6 months.

9. Furthermore, the trial is still stated to be at the initial stage inasmuch as out of 15 prosecution witnesses cited only 3 have been examined. Learned State counsel would further concede that the petitioner is not involved in any other case under the NDPS Act.

10. In the totality of the circumstances, this Court is of the considered view that the petitioner is held entitled to the benefit of regular bail. Petition is allowed.

11. Bail to the satisfaction of the trial Court.

12. Disposed of.