

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CRM-M No.20157 of 2015

Date of Decision: 26.08.2015

Punam Chand @ Soshan

..... Petitioner

Vs.

Narcotics Control Bureau, Chandigarh Zonal Unit,
Sector 25, Chandigarh

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. Man Mohan Singh, Senior Advocate assisted by
Mr. S.K.Verma, Advocate;
Mr. Mukesh Verma, Advocate and
Mr. R.K.Verma, Advocate for the petitioners.

Mr. D.D.Sharma, Advocate for the respondent.

JASWANT SINGH, J. (Oral)

The prayer is for grant of regular bail to the petitioner in Crime Case No.13/2014 dated 27.03.2014, under Sections 8, 20, 25, 29 and 60 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), registered with Narcotic Control Bureau, Sector 25, Chandigarh.

This is third regular bail petition, after two bail petitions were earlier withdrawn.

As per the allegations, which can be summed up from the investigation, are that the petitioner was to purchase a portion of the seized 7 Kg. of Charas (commercial quantity) from the co-accused, and thus he has abetted and is a party to a criminal conspiracy to commit an offence under the NDPS Act.

Learned Counsel for the petitioner has argued (i) that PW-4 Sachin Guleria, Intelligence Officer, NCB, Chandigarh had acted as a Police Officer and, therefore, the statement of the petitioner/accused recorded under Section 67 of the NDPS Act cannot constitute the basis of conviction in light of the provision of Section 25 of the Indian Evidence Act (ii) the other argument raised is that the petitioner was picked up from his house in Pushkar (Rajasthan) and as per the provisions of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (for short '1988 Act'), the petitioner could not be detained for more than six months. The petitioner being in custody since 27.03.2014 is, therefore, entitled to the concession for grant of bail.

On the other hand, learned Counsel for the respondent states that the prosecution evidence was completed and the statements of all the accused under Section 313 Cr.P.C. was recorded on 30.05.2015. Thereafter, four defence witnesses have been examined and the case is now listed for 08.09.2015.

Learned Counsel for the parties have been heard.

The issue as to whether an Officer like the Intelligence Officer (PW-4 Sachin Guleria) would be considered as a Police Officer before whom the statement under Section 67 of the NDPS Act was made for the purpose of being hit by Section 25 of the Indian Evidence Act, is a question which has been referred to a larger Bench by the Hon'ble Supreme Court in Tofan Singh Vs. State of Tamil Nadu, 2013 (4) R.C.R. (Criminal) 631. Apart from that, the said question is to be determined at the trial and this Court is not inclined at the stage when the trial is at the fag end to go into such question. As regards the other argument, the applicability of the 1988 Act is not attracted in the present case since the detention was not under any power or order passed under Section 3 of the 1988 Act.

In view of the above, there is no merit in the present petition and, therefore, is dismissed. However, any opinion expressed herein shall not be considered an opinion on the merits of the case.

August 26, 2015

Gagan

**(JASWANT SINGH)
JUDGE**