

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-2286 of 2015

Date of decision : 6.4.2015

Magh Singh @ Maghu

.....Petitioner(s)

Versus

State of Punjab

....Respondent(s)

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Ms. Gaganjot Kaur, Advocate for the petitioner.

Mr. Neeraj Yadav AAG, Punjab.

DARSHAN SINGH, J.

As per the prosecution allegations, on 31.5.2014, 600 grams intoxicant powder (Nitrazepam) was recovered from the possession of the petitioner. As a result of which, this case under Section 22 of the NDPS Act 1985 (hereinafter called 'the Act') has been registered. The petitioner was arrested on the same day i.e. 31.5.2014. Since then he is in custody. The application for grant of bail has been dismissed by the learned Special Judge, Fazilka. Hence, this petition.

Learned counsel for the petitioner contended that there is violation of the mandatory provisions of Section 50 of the Act as the seal after use has also been handed over to the police official and there is scope for tampering with the sample. The petitioner is in custody since 31.5.2014 i.e. for the last about more than 10 months. The trial of the case will take time. So, the petitioner deserves the concession of the regular bail.

On the other hand, learned State counsel pleaded that the quantity of the intoxicant powder recovered from the possession of the

petitioner falls in the definition of commercial quantity. The conditions provided under Section 37 of the Act are to be fulfilled. So, he is not entitled for the grant of bail.

I have duly considered the aforesaid contentions.

The contentions raised by the learned counsel for the petitioner that there is violation of Section 50 of the NDPS Act, that seal after use has been handed over to police official and there is apprehension of tampering with the sample parcel, are the questions of fact and can only be adjudicated upon on appreciation of evidence at the appropriate stage.

This fact is not disputed that the quantity of the intoxicant powder allegedly recovered from the petitioner falls in the definition of commercial quantity. So, the grant of the bail is governed by the provisions of Section 37 of the Act. In the instant case, the learned State counsel has opposed the grant of bail to the petitioner. There is no material at this stage to satisfy this Court that there are reasonable grounds to believe that the petitioner is not guilty of the offence and that he will not commit any such offence while on bail. Thus, conditions provided under Section 37 of the Act are not fulfilled. Mere this fact that the petitioner is in custody since 31.5.2014 is no ground to ignore the mandatory provisions of Section 37 of the Act.

Thus, keeping in view my aforesaid discussion, the present petition has no merits and the same is hereby dismissed.

April 06, 2015
ps

(DARSHAN SINGH)
JUDGE