

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

**Criminal Misc. No. M-17526 of 2018
Date of decision: 11.09.2018**

Binder

..Petitioner

Versus

State of Punjab

..Respondent

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. Mandeep K. Dhot, Advocate
for the petitioner.

Ms. Rashmi Attri, AAG, Punjab
for the respondent -State.

Daya Chaudhary, J.

Petitioner-Binder has approached this Court by way of filing the present petition under Section 439 Cr.P.C. for grant of regular bail to him in case FIR No.03 dated 05.01.2018 registered under Section 22/61/85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act') at Police Station Sadar Sunam, District Sangrur during pendency of the trial.

Learned counsel for the petitioner submits that the petitioner has falsely been implicated in the case and mandatory provisions of the NDPS Act have not been followed as neither any offer was given to the petitioner nor he was searched in presence of any Magistrate or Gazetted Officer. The consent memo is also defective. Learned counsel further submits that no independent witness was joined at the time of alleged recovery. As per allegations levelled in the FIR, the petitioner has been

shown to be sitting between two persons on the motorcycle and the alleged recovery is shown to be effected from the plastic bag lying on the motorcycle and as such, the conscious possession of the petitioner is not proved. Learned counsel also submits that the petitioner is neither owner nor was driving the motorcycle and no recovery was effected from him. At the end, learned counsel for the petitioner submits that nothing is mentioned in the FIR as to whether any sample was taken by the Police from the alleged recovery for sending the same to the FSL for testing. The petitioner is in custody since registration of FIR i.e., 05.01.2018 and no other case of NDPS is pending against him. Even in the order passed by the lower Court, no merit has been discussed.

Learned State counsel has not disputed the custody period as well as the fact that no other case is pending against the petitioner but has opposed the submissions made by learned counsel for the petitioner on the ground of seriousness of offence.

Heard arguments of learned counsel for the petitioner as well as learned State counsel and have also perused the contents of the FIR as well as other documents available on the file.

The petitioner filed the bail application under Section 439 Cr.P.C. before the Judge, Special Court, Sangrur for grant of regular bail, which was denied to him. Thereafter, the petitioner moved an application for reconsideration of grant of concession of regular/interim bail to him during pendency of the proceedings in the Court as report of Chemical Examiner was not received. The said application was dismissed vide order dated 11.04.2018 on the ground that the petitioner is not entitled for

concession of regular/interim bail as FIR was registered on 05.01.2018 and stipulated period of 180 days for presentation of challan has yet not expired. The bail application was dismissed by considering the provisions as envisaged under Section 37 of the NDPS Act.

On perusal of order dated 11.04.2018, it is apparent that neither any merit of the case has been discussed nor any specific finding has been given as to how the petitioner is not entitled for bail. It has only been mentioned that the petitioner has not been held entitled for grant of regular/interim bail.

No doubt, the FSL report has been received but prior to receipt of FSL report, interim bail can be granted. Moreover, at the time of passing of order, the case should have been heard on merits and thereafter, order would have been passed. Many factors are to be seen at the time of consideration of bail like nature of offence; custody period; pendency of any other case as well as past history of the accused. It is also necessary to be considered that in case, the petitioner is released on bail, then as to how he is going to influence the witnesses or tamper with the evidence.

In the present case, all witnesses are official witnesses and there cannot be any possibility that the petitioner may influence the witnesses or tamper with the evidence. All these findings have not been recorded while declining bail to the petitioner.

Accordingly, the present petition is disposed of and order dated 11.04.2018 is set-aside with the direction to the trial Court i.e., Judge, Special Court, Sangrur to reconsider the case of the petitioner for grant of regular bail in view of factors as mentioned above. The necessary exercise

be done within a period of two weeks from the date of receipt of certified copy of this order.

11.09.2018
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes