

S.No.212

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

CRM-M-19496 of 2018 (O&M)

Date of Decision:16.08.2018

Sarmukh Singh alias Surmukh SinghPetitioner

Vs.

State of PunjabRespondent

CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. Veneet Sharma, Advocate
for the petitioner.
Mr. K.S. Aulakh, DAG, Punjab.

Rajbir Sehrawat, J.(Oral)

The present petition has been filed by the petitioner under Section 439 Cr.P.C for grant of bail pending trial in case FIR No.83 dated 22.10.2016 registered under Sections 21 and 22 of NDPS Act, at Police Station, Raja Sansi, Amritsar Rural, District Amritsar.

Counsel for the petitioner submits that the alleged recovery against the petitioner has been concocted by the Police. It is further contended that the safeguards provided under Section 50 of NDPS Act have not been observed by the Police. Counsel further contends that the alleged recovery shown from the petitioner is 150 grams of intoxicating powder, which is subsequently found to be Buprenorphine Hydrochloride. Counsel further submits that earlier the petitioner was arrested on 22.10.2016 but he was released on interim bail on 12.12.2016. However, after the receipt of the FSL report, the bail of the petitioner was cancelled by the trial Court and the petitioner was taken into custody on 02.05.2018. Since then he is in custody. It is further contended by the counsel that during the period, the petitioner remained on bail, there is no allegation of misuse of this liberty by him. The petitioner has maintained the good conduct during this period.

There is no other case against the petitioner. Hence, the bail pending trial is

sought for.

On the other hand, learned counsel for the State submits that the quantity of the contraband recovered from the petitioner is commercial quantity. However, it is not disputed that there is no other case against the petitioner or that he has maintained good behaviour during the period he was released on bail.

In view of the above, it is clear that although the personal search of the petitioner was made, however, the Magistrate or the Gazetted Officer was not called on the spot. Not only that, even the option was not given to the petitioner whether he wanted to be searched in the presence of a gazetted Officer or the Magistrate.

In the opinion of this Court, this is a case where the allegation against the petitioner is not prima-facie shown to be made out. Still further, it is not disputed that the petitioner is the first offender. He has not indulged in any offence even while he was on bail. Therefore, in all likelihood, he is not to indulge in committing any offence under the NDPS Act, if he is released on bail.

In view of the above, but without commenting any further on the merits of the case, the present petition is allowed. The petitioner is ordered to be released on bail pending trial on furnishing his bail bonds/sureties to the satisfaction of the trial Court/ Duty Magistrate.

August 16, 2018
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(RAJBIR SEHRAWAT)
JUDGE

Whether Speaking/reasoned
Whether Reportable

Yes/No
Yes/No