

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

**CRM-M No.29392 of 2017
Decided on: 09.08.2018**

Arun Paswan

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. B.S. Kathuria, Advocate
for Mr. C.L. Verma, Advocate
for the petitioner.

Mr. Sidakmeet Singh Sanghu, AAG, Punjab.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for grant of regular bail to the petitioner under Section 439 of the Code of Criminal Procedure (in short 'Cr.P.C.') in FIR No.44 dated 24.02.2017, for offence punishable under Section 18/61/85 of the Narcotic Drug and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') registered at Police Station Division No.5, Ludhiana, District Ludhiana.

Counsel for the petitioner has submitted that the petitioner is the first offender and he is not involved in any other case under the NDPS Act and as on today, he has undergone about 01 year and 05 months of actual custody. Counsel for the petitioner has referred to the statement of PW3 – ASI Chand Heer, the Investigating Officer, who has admitted in his cross-examination that neither he is confirmed ASI till

date nor he has passed the course for confirmation as ASI and he is drawing the salary of a Head Constable till date.

Counsel for the petitioner has relied upon the judgment passed by the Hon'ble Division Bench of this Court ***“Bikkar Singh vs State of Punjab”***, 2006(3) RCR (Criminal) 16, wherein in similar circumstances, it was held that where an investigation is conducted by an ASI, who is not a confirmed employee, he is not competent to exercise the powers as specified under Sections 42 and 67 of the NDPS Act and the accused was acquitted on this ground.

Counsel for the petitioner has further argued that still 06 prosecution witnesses are yet to be examined and it will take long time in conclusion of the trial.

Counsel for the State, on instructions from HC Nasib Singh, has not disputed the factual position, however, has opposed the prayer for bail on the ground that on similar grounds, bail to the co-accused namely Neeraj Paswan was granted and he has jumped the jail and later on, he was declared as proclaimed offender and, therefore, there is every possibility that in case concession of bail would be granted to the petitioner, he may also abscond from the process of law.

Without commenting anything on merits of the case and considering the fact that the petitioner is the first offender; he is not involved in any other case under the NDPS Act and in view of the judgment ***Bikkar Singh's case (supra)***, this petition is allowed and the petitioner is ordered to be released on bail subject to his furnishing bail bonds and 02 surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate.

However, it will be open for the prosecution to apply for cancellation of bail of the petitioner, in case he is found involved in any other case or misusing the concession of bail, in any manner.

(ARVIND SINGH SANGWAN)
JUDGE

09.08.2018
yakub

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No