

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

CRM-M No. 36488 of 2018

Date of decision : 23.10.2018

Babbu Singh alias Tidda

.....Petitioner

Versus

State of Punjab

...Respondent

CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present : Mr. L. S. Sekhon, Advocate for the petitioner.

Ms. Rashmi Attri, AAG, Punjab.

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DAYA CHAUDHARY, J.

Petitioner Babbu Singh alias Tidda has filed the present petition under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to him in case FIR No.09 dated 21.01.2018 under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short – 'NDPS Act') registered at Police Station – Dhanoula, Distt. Barnala during pendency of the trial.

Learned counsel for the petitioner submits that as per allegations levelled in the FIR, the alleged substance was kept in a bag which was hold by the petitioner and co-accused. The recovery was not effected from the conscious possession of the petitioner. There was non-compliance of mandatory provisions of Section 50 of the NDPS Act. Learned counsel also submits that neither the CFL form was filled up by the

Investigating Officer at the spot nor it was deposited with the MHC on the same day. The alleged recovery was effected on 21.01.2018 and it was produced before learned Magistrate on 22.01.2018. The petitioner is in custody since 21.01.2018 and no other case of NDPS Act is there against him. Learned counsel also submits that all prosecution witnesses are official witnesses and there is no possibility that the petitioner may influence them or tamper with the evidence. Challan has been presented in the Court and thereafter, charges have also been framed. But even a single witness has not been examined so far.

Learned State counsel has not disputed the custody period undergone by the petitioner and the stage of trial but opposed the submissions made by learned counsel for the petitioner with regard to grant of bail being the commercial quantity.

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

As per case of the prosecution, the alleged tablets were recovered from the accused which were kept in a plastic bag which was being held by the pillion rider. The conscious possession is matter of evidence which would be tested during trial and it cannot be said at this stage that the recovery was effected from the conscious possession of the petitioner. All prosecution witnesses are official witnesses and there is no possibility that the petitioner may influence them. The alleged recovery is marginally more than the non-commercial quantity. The trial may take long

time to conclude and no useful purpose would be served by keeping the petitioner behind the bars. No other case of NDPS Act is pending against him.

Accordingly, the present petition is allowed and the petitioner is directed to be released on regular bail on furnishing adequate bail/surety bonds to the satisfaction of the trial Court.

23.10.2018

sunil yadav

**(DAYA CHAUDHARY)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No