

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

**Criminal Misc. No. M-36772 of 2018
Date of decision: 12.11.2018**

Himanshu Chopra

..Petitioner

Versus

State of Punjab

..Respondent

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. Anterpreet Singh, Advocate
for the petitioner.

Mr. Amit Mehta, Sr. DAG, Punjab
for the respondent-State.

Daya Chaudhary, J.

The present petition has been filed by petitioner-Himanshu Chopra under Section 439 Cr.P.C. for grant of regular bail in case FIR No.211 dated 05.09.2016 registered under Section 22/61/85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Division No.7, District Ludhiana.

Learned counsel for the petitioner submits that the petitioner has falsely been implicated in the case whereas he was not involved. As per allegations levelled in the FIR, the Police party was on patrolling duty on 05.09.2016 at about 5:00 pm. Two Hindu young boys came from the side of Basti Jodhewal on motorcycle make Hero Honda black colour bearing registration No. PB-10-BH-2233 and were apprehended. They disclosed their names as Himanshu Chopra and Jaspal Kumar. Thereafter, the personal search was conducted and 100 gms of intoxicant powder was recovered

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from the right pocket of the trouser of the petitioner, namely, Himanshu Chopra and 270 gms of intoxicant powder was recovered from the right pocket of his lower whereas in fact it was effected from Deepak Verma @ Deepu. Learned counsel further submits that the petitioner is neither owner of the motorcycle nor any recovery was effected from him. No independent witness was joined at the time of alleged recovery and mandatory provisions of Section 50 of the NDPS Act have not been followed as personal search of the petitioner was neither effected in presence of any Magistrate nor Gazetted Officer and as such, the petitioner is entitled for bail only on the ground of non-compliance of mandatory provisions of the NDPS Act. Learned counsel also submits that earlier the petitioner was released on interim bail as FSL report was not received but subsequently, after receipt of FSL report, he himself has surrendered on 15.02.2018 and since then, he is in custody. As per FSL report, the alleged intoxicating powder, which was recovered from the petitioner, contains Diphenoxylate Hydrochloride, which has been declared as manufactured drug as per Government of India Notification No. SO826(E) dated 14.11.1985 and S.O.40(E) dated 29.01.1993. At the end, learned counsel for the petitioner submits that the petitioner is neither previous convict nor involved in any other case of NDPS.

Learned State counsel has not disputed the custody period as well as the fact that the petitioner was earlier released on interim bail till receipt of FSL report.

Heard arguments of learned counsel for the petitioner as well as

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learned State counsel and have also perused the allegations levelled in the FIR and other documents available on the file.

In view of the submissions made by learned counsel for the petitioner that at the time of personal search, neither any Gazetted Officer nor Magistrate was present, meaning thereby, the search was not conducted in presence of either of the officers; no independent witness was joined at the time of alleged recovery; as per FSL report, the alleged intoxicating powder, which was recovered from the petitioner, contains Diphenoxylate Hydrochloride, which has been declared as manufactured drug as per Government of India Notification No. SO826(E) dated 14.11.1985 and S.O.40(E) dated 29.01.1993; the petitioner is in custody since 15.02.2018; all the witnesses are official witnesses and there is no possibility that the petitioner may influence the witnesses or tamper with the evidence; the trial may take time to conclude and no purpose would be served by keeping the petitioner in custody, the present petition is allowed and the petitioner (Himanshu Chopra) is directed to be released on regular bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court.

12.11.2018
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	No