

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

CRM-M No.41602 of 2018

Date of Decision: 19.12.2018

Sunil Kumar

....Petitioner

Versus

State of Haryana

....Respondent

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Vishal Nehra, Advocate
for the petitioner.

Mr. R.S. Doon, A.A.G., Haryana.

DAYA CHAUDHARY, J. (ORAL)

This petition has been filed under Section 439 Cr.P.C. for grant of regular bail to petitioner-Sunil Kumar in case FIR No.112 dated 05.03.2018 registered under Sections 20(b)(ii)(c) of the NDPS Act, 1985 at Police Station Sector 5, Gurugram, District Gurugram.

Learned counsel for the petitioner submits that the petitioner has falsely been implicated in the case, whereas, he was not involved. There is non-compliance of mandatory provisions of the Act. No independent witness was joined at the time of alleged recovery. Even the seal after use was not handed over to the independent witness. The search was conducted in presence of Investigating Officer and neither the Magistrate nor the Gazetted Officer was present. The option given to the petitioner was not valid. All witnesses are the official witnesses and there is no possibility that the petitioner may tamper with the evidence or influence the witnesses. No other case under the NDPS Act is pending against the petitioner. The

petitioner is in custody for the last about ten months.

Learned State counsel has not disputed the custody period and also the fact that no other case under the NDPS Act is pending against the petitioner.

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.

By considering the submissions made by learned counsel for the petitioner and also the fact that the petitioner is in custody for the last about ten months; no other case under the NDPS Act is pending against him; no search was conducted in presence of Gazetted Officer or any Magistrate, whereas, the same is mandatory and even no independent witness was joined, the present petition is allowed and petitioner, namely, Sunil Kumar is directed to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court.

(DAYA CHAUDHARY)
JUDGE

19.12.2018
gurpreet

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No