

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

CRM-M No.7832 of 2018

Date of decision : 05.07.2018

Jasvir Singh

.....Petitioner

Versus

State of Punjab

...Respondent

CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present : Mr. Munish Behal, Advocate for the petitioner.

Mr. Rahul Rathore, D.A.G., Punjab.

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DAYA CHAUDHARY, J. (Oral)

The present petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the petitioner in case FIR No.50 dated 28.08.2017 under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short – 'the NDPS Act'), registered at Police Station City, Banga, Distt. S.B.S. Nagar.

Learned counsel for the petitioner submits that the alleged search was not conducted in presence of any Gazetted Officer or the Magistrate and as such, provisions of Section 50 of the NDPS Act have not been complied with. Learned counsel further submits that neither any independent witness was joined at the time of alleged recovery nor any option was given to the petitioner to get the search conducted in presence of

a Gazetted Officer or a Magistrate. The recovery has been shown to be effected from the canal side at 04:00 p.m. and there was rush of persons as it was a public place but still no efforts were made to join any independent witness. Samples were not drawn from each injection, which also doubts the case of the prosecution. Petitioner is in custody since 28.08.2017 and only one prosecution witness has been examined and trial may take long time to conclude. There is no other case of NDPS Act pending against him.

Learned State counsel has not disputed the fact that no other case of similar nature is pending against the petitioner as well as the stage of the trial. It is also not disputed that no independent witness was joined at the time of the search.

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

Keeping in view the custody period of the petitioner, which is from 28.08.2017 and also by considering the stage of the trial as only one witness has been examined and the fact that all prosecution witnesses are official witnesses and there is no possibility that the petitioner may influence them, there is violation of Sections 42 and 50 of the NDPS Act and no other case of similar nature is pending against him, the present petition is allowed and the petitioner is directed to be released on regular bail to the satisfaction of the trial Court.

However, it is made clear that in case the petitioner is found to be involved in any other case of similar nature, the State is at liberty to

move application for cancellation of the bail.

05.07.2018

sunil yadav

**(DAYA CHAUDHARY)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No