

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CRM M-33757 of 2019

Date of Decision: September 6, 2019

Kuldeep Singh	Petitioner
Vs.	
State of Punjab	Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU.

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Present:- Mr.Parminder Singh-I, Advocate for the petitioner
Mr. H.S. Multani, AAG, Punjab.

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MAHABIR SINGH SINDHU, J.

Present petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case FIR No. 18 dated 12.02.2019 under Section 22 of the NDPS Act, 1985, (for short 'the Act'), registered at Police Station Maur, District Bathinda.

Allegations in brief are that HC Avtar Singh received a secret information that petitioner whose one foot is amputated, selling intoxicants from his house and if a raid is conducted, he can be apprehended with the contraband. Consequently, a ruqa was sent to Police Station for registration of the FIR and a raid was conducted in the house of the petitioner, as a result thereof, 15 bottles of Onerex 100 ml each and 15 strips of Carisoprodol having 10 tablets each were recovered.

It is contended on behalf of the petitioner that he is in custody since 12.02.2019 and there is no other criminal case pending

against him. Also contends that after investigation report under Section 173 of the Code of Criminal Procedure, 1973, (for short 'Cr.P.C.') has been submitted but charges are yet to be framed. Further contends that neither the information was reduced into writing; nor the same was sent to the higher official (s) and thus, there is a breach of Section 42 (2) of the Act.

Learned State counsel has acknowledged the above factual position on instructions from SI Devender Singh and fairly conceded that there was no compliance of provisions of Section 42 (2) of the Act, but he opposed the bail on the ground that recovery is commercial in nature.

Heard both sides and perused the paper book.

As per the case of the prosecution itself, recovery was effected from the house of the petitioner on the basis of secret information and that was neither reduced into writing; nor any intimation send to the higher police official(s) in terms of Section 42 (2) of the Act. Therefore, prima facie the recovery of contraband becomes questionable. Even otherwise, the petitioner is in custody since 12.02.2019; there is no other criminal case pending against him; and prosecution evidence is yet to start, therefore, keeping in view the totality of the facts and circumstances of this case, this Court deems it appropriate to release the petitioner on bail pending trial.

Petition is allowed. Petitioner is ordered to be released on bail on his furnishing bail bonds/ surety bonds to the satisfaction of CJM/ Duty Magistrate concerned.

However, it is clarified that in case there is a recurrence on part of the petitioner, State of Punjab will be at liberty to move an application for recalling of this order.

It is clarified that observations made above may not be construed as an expression of opinion on the merits of the case.

A copy of this order be sent to DGP, Punjab, for information and necessary action against the erring officials for not following the proper procedure, as prescribed under Section 42(2) of the Act.

September 6, 2019
sanjay

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/ reasoned:	Yes/ No.
Whether Reportable:	Yes/No.