IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M No.37385 of 2019 (O&M)
Date of Decision: 10.09.2019

Sukhdev Singh @ Sukha

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Satnam Singh Gill, Advocate for the petitioner.

Mr. Venu Gopal Jauhar, Sr. DAG, Punjab
for the respondent/State.

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MAHABIR SINGH SINDHU, J. (Oral)

Present petition has been filed under Section 439 Cr.P.C. for grant of bail pending trial to the petitioner in case bearing FIR No.429 dated 05.11.2014, under Sections 21, 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 *(for short 'the Act'),* registered at Police Station 'A' Division, Amritsar, District Amritsar.

Contends that Assistant Sub Inspector Tarlochan Singh, who seized the contraband and arrested the petitioner, was not legally competent in view of the fact that he was holding the substantive rank of Head Constable only.

The above factual position is not disputed by learned State Counsel, on instructions from ASI Ravish Kumar.

Heard both sides and perused the paper-book.

As per the prosecution case, the alleged contraband was recovered by ASI Tarlochan Singh, who was merely a Head Constable according to his substantive rank and as such, could not be termed to be

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legally authorized person for this purpose. Since the recovery itself was not legally permissible by Head Constable in view of Notification dated 03.09.1987, issued by the Government of Punjab, Department of Excise and Taxation, therefore, the prosecution of the petitioner under the Act in this case is a debatable issue. Still further, petitioner is in custody since 16.01.2019 and report under Section 173 Cr.P.C. has already been submitted before the Court of competent jurisdiction on 06.10.2018. Out of total 10 prosecution witnesses, only 02 have been examined till date and as such, trial is likely to take long time for its conclusion. Consequently, without expressing any opinion on the merits of the case, the present petition is allowed. Petitioner be admitted to bail on his furnishing bail bonds and surety bonds to the satisfaction of learned trial Court/Duty Magistrate concerned.

The above observations may not be construed as an expression of opinion on the merits of the case.

It is clarified that in case there is any recurrence on the part of the petitioner, State of Punjab would be at liberty to move an appropriate application for recalling of this order.

September 10, 2019 **(MAHABIR SINGH SINDHU)**
Gagan **JUDGE**

Whether speaking/reasoned	*Yes*
Whether Reportable	*Yes*

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