

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

CRM M-13130 of 2020 (O&M)
Date of Decision: July 23, 2020

Devinder SinghPetitioner
Versus
State of Punjab Respondent

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present : Mr. A.D.S. Sukhija, Advocate
for the petitioner.

Mr. Gaurav Garg Dhuriwala, Sr. DAG, Punjab.

FATEH DEEP SINGH, J. (Oral)

The matter has been taken up through video-conferencing on account of outbreak of pandemic COVID-19.

Petitioner Devinder Singh has moved this first regular bail application under Section 439 of Cr.P.C. in FIR No. 47 dated 06.05.2018 under Section 22 of NDPS Act registered

at Police Station Phase 11, Mohali.

The allegations brought to the notice of this Court by the learned State counsel are that the police party comprising of ASI Gurnam Singh, HC Nirmal Singh, HC Nishan Singh, HC Mahinder Preet and Constable Kuldeep Singh was on patrolling duty on private vehicle in the area of NIPER when they as per received secret information saw a car bearing registration No. PB-65-AN-6161 coming and which was stopped by means of torch light. HC Nirmal Singh and HC Mohinder Preet conducted search of the car and from the glove box 17 packets of Microlit were recovered, for which, the accused could not show any licence/authorization. Each of the packets contained 100 tablets and in total 1700 tablets were recovered leading to the arrest of the petitioner.

Learned counsel for the petitioner *inter alia* contends that a bare perusal of the vernacular version of the FIR shows that search and seizure has been made by a Head Constable who is not duly authorized officer in terms of Section 42 of the NDPS Act. It further argued that only a single strip of tablets has been sent for analysis and while the other strips numbering 16 were never sent for chemical examination and it cannot be presumed that they too were of the similar nature contending that the petitioner is behind the bars since a long time.

Mr. Gaurav Garg Dhuriwala, Sr. DAG, Punjab with all fairness concedes that bare perusal of the FIR reveals that search and seizure is not by any authorized officer under Section 42 of the Act and it is subsequently an Assistant Sub-Inspector has been introduced in the recovery memo and further accepts that only a single strip out of the recovered strips has been sent for chemical examination but has opposed the grant of bail quantity being commercial in nature.

Going through the submissions, admittedly, the learned State counsel in spite of repeated adjournments and query posed could not satisfactorily explained how Head Constable was an authorized officer under Section 42 of the Act. More so, only a single strip has been sent for chemical analysis out of the 17 recovered and, therefore, the very nature of the remaining strips is a debatable issue. The petitioner is behind the bars since long time; the fact that the trial is not likely to be completed in near future and in view of Pandemic COVID 19 scenario, this Court deems it a fit case for allowing the bail. Accordingly, the petitioner is ordered to be released on regular bail to the satisfaction of Chief Judicial Magistrate/Duty Magistrate, concerned.

However, it is made clear that anything observed herein shall not be construed as an expression on the merits of

the case.

Disposed off.

July 23, 2020
amit rana

(FATEH DEEP SINGH)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No