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

CRM-M No.858 of 2021 (O&M)

Date of decision: 10.03.2021

Dheer Singh

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Vijay K. Jindal, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN J. (Oral)

Prayer in this petition is for grant of regular bail to the petitioner under Section 439 of the Code of Criminal Procedure (in short 'Cr.P.C.') in FIR No.18 dated 04.07.2018, for offence punishable under Sections 21, 25 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') registered at Police Station State Special Operation Cell, Amritsar District Amritsar.

Counsel for the petitioner has submitted that as per the allegations in the FIR, on receiving a secret information that 03 persons namely Dheer Singh (petitioner herein), Harjinder Singh and Gagandeep Singh, are involved in smuggling of Heroin on India-Pakistan Border and they are procuring their consignments through river channels, a ruqa was sent to the Police Station for registration of the FIR and thereafter, a total recovery of 3.162 Kgs of Heroin was effected from them. It is further stated that as per the memo, the recovery from the petitioner is of 1.46 Kgs.

Counsel for the petitioner has further submitted that the petitioner is in custody since 09.07.2018 and a period of 02 years and 08 months has been passed and the case, before the trial Court, is still at the stage of recording the prosecution evidence as out of 18 PWs, 13 PWs have been examined. It is further argued that the petitioner is not involved in any other case under the NDPS Act, though, he has been nominated in one case registered under the Arms Act.

Counsel for the petitioner has also argued that there are moot points involved in the case, which are to be decided during the course of trial as in the non-consent memo, the Investigating Officer has given an offer that the petitioner has a right to be searched either by himself or the Gazetted Officer or by the Magistrate and it is not the proper compliance of Section 50 of the NDPS Act.

Another argument raised by counsel for the petitioner is that in compliance of Section 42 of the NDPS Act, the ruqa was sent by the Inspector/Investigating Officer to a subordinate officer, but the requirement is that it should be sent to a higher official.

Counsel for the State on the basis of the Custody Certificate has not disputed the factual position but opposed the prayer for bail on the ground that the recovery is heavy from the petitioner.

After hearing the counsel for the parties, without commenting anything on merits of the case, considering the fact that the petitioner is in custody for the last 02 years and 08 months; the trial of the petitioner was considerably delayed due to COVID-19 situation; the petitioner is in long custody and raised certain moot points, which are to be decided during the course of trial; the custodial interrogation of

the petitioner is not required and the conclusion of the trial will take some time due to COVID-19 situation, this petition is allowed and the petitioner is directed to be released on bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate.

However, it will be open for the prosecution to apply for cancellation of bail of the petitioner, in case he is found involved in any other case or misusing the concession of bail, in any manner.

(ARVIND SINGH SANGWAN)
JUDGE

10.03.2021
yakub

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No