

In virtual Court

CRM-M-19831-2021

-1-

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

**CRM-M-19831-2021 (O&M)
Date of decision: 04.10.2021**

Sandeep Singh @ Sippy

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

**Present: Mr. Vidit Bansal, 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 in FIR No.01 dated 04.01.2021 under Sections 21, 23, 30 of NDPS Act, registered at Police Station State Special Operation Cell, Fazilka.

Learned counsel for the petitioner submits that as per allegations in the FIR, registered at the instance of ASI Hardyal Singh, on receiving the secret information that Sandeep Singh @ Sippy, Kirpal Singh and Gurcharan Singh @

Channa are having connection with Pakistani smugglers and they are going to procure narcotic substance from Indo-Pak border under the garb of fog, a ruqa was sent to the police station and thereafter, police arrested the petitioner along with co-accused Kirpal Singh. It is further submitted that before conducting the search, a notice under Section 50 of NDPS Act was given, in which it was stated that the petitioner has a right to be searched before a Gazetted Officer or a Magistrate or before the Investigating Officer himself and the same do not meet the mandatory requirement of Section 50 of NDPS Act, as there is no such provision that the Investigating Officer himself can offer to give consent to be searched before him.

Learned counsel has referred to joint confessional statement of petitioner Sandeep Singh @ Sippy and co-accused Kirpal Singh, wherein it is stated that they have handed over heroin to co-accused Gurcharan Singh @ Channa and he gave Rs.28.00 lacs, out of which they kept Rs.2.00 lacs each and remaining, they had hide in the bushes. It is submitted that Rs.2.00 lacs have been recovered from the petitioner and later on, the remaining amount of Rs.24.00 lacs was recovered, though as tried to set up a case that in pursuance of an agreement to sell, father of the petitioner, namely Pardesh Singh, on 26.12.2020, sold some of his land to Munsha Singh, on receiving Rs.20.00 lacs.

Affidavit of Senior Superintendent of Police, Fazilka, filed in the Court today, is taken on record, in which it is stated that the inquiry was conducted with regard to validity of the agreement to sell and it was found that

same is executed between father of the petitioner, namely Pradesh Singh and his brother-in-law Munsha Singh and it could not be ascertained whether any amount is paid in terms of agreement to sell, either in cash or through cheque. It is further stated that as per statement of Notary Public, said agreement to sell was under-stamped.

Learned State counsel has filed the custody certificate dated 02.10.2021 in the Court today and submitted that the petitioner is involved in one more case registered under NDPS Act in the year 2020, however, it is not disputed that in the present case, custody of the petitioner is 08 months and 21 days and only 30 grams of heroin was recovered from him.

Without commenting anything on merits of the case, considering the fact that recovery from the petitioner is of non-commercial quantity; he has set up a defence of agreement to sell with regard to the amount recovered from him, which according to the police is drug money and according to the petitioner, it is earnest money received in terms of the agreement to sell, which was executed much prior to registration of the FIR and also in view of the fact that it will be a matter of trial whether notice under Section 50 of NDPS Act, giving a third option, to be searched before the Investigating Officer, which is not provided under NDPS Act and lastly, in view of the fact that a joint confessional statement of both the accused was recorded, which will again be a subject matter of trial, therefore, considering the fact that challan stands presented and charges are framed recently on 15.09.2021, this petition is

In virtual Court

CRM-M-19831-2021

-4-

allowed and the petitioner is directed to be released on regular bail subject to furnishing his bail/surety bonds to the satisfaction of the trial Court/Illaqa Magistrate/Duty Magistrate, concerned.

Petition is disposed of.

[ARVIND SINGH SANGWAN]
JUDGE

04.10.2021
vishnu

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No