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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M No.28694 of 2020 (O&M)
Date of decision: 23.08.2021

Sourav Kumar @ Mantri

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Rahul Bhargava, Advocate
and Ms. Aarti, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN J. (Oral)

Prayer in this 2nd 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.394 dated 22.11.2017, for offence punishable under Section 22 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (in short 'the NDPS Act') registered at Police Station Nakodar Sadar, District Jalandhar (Rural).

The earlier one was dismissed as withdrawn on 21.01.2020.

It is submitted that now sufficient period has been passed and the petitioner is in custody for the last 03 years and 03 months and out of 30 PWs only 06 PWs have been examined so far.

Counsel for the petitioner has argued that as per the allegations in the FIR, a person coming on foot, became perplexed on seeing the police party and tried to run away, was apprehended by the police on suspicion of carrying some narcotics substance. Thereafter, he was given a notice under Section 50 of the NDPS Act, giving an option to be searched before the Gazetted Officer or a Magistrate. On this, the petitioner gave his consent to be searched before the same Investigating Officer. Thereafter, the Investigating Officer Iqbal Singh conducted the

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search and recovered 120 gms of intoxicant substance, which he was carrying in the pocket of his trouser. It is also submitted that the complainant and the Investigating Officer are the same person and no second Investigating Officer was called despite the fact that the recovery was effected from the personal search of the petitioner.

Counsel for the State on the basis of the Custody Certificate has not disputed the factual position but opposed the prayer for bail. However, it is submitted that the petitioner stands convicted in one more case.

Without commenting anything on merits of the case, considering the fact that the complainant himself conducted the entire investigation including the personal search of the petitioner, it will be a matter of trial, whether proper procedure has been followed or not and also in view of the fact that the petitioner is in custody for the last 03 years and 03 months; 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/Illaqa 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

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No

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