

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

CRM-M-52230-2019 (O&M)

Date of decision: 15.11.2021

Pankaj Kumar

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Raj Kumar Gupta, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN, J. (Oral)

This petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No. 33 dated 02.07.2019, registered under Section 22 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (*for short the 'NDPS Act'*) at Police Station Handesra, District S. A. S. Nagar.

Learned counsel for the petitioner submits that as per allegations in the FIR, registered at the instance of ASI Bhagwant Singh, it is stated that while he, along with the police party, was on a patrol duty for checking vehicles, a person was seen carrying a bag and coming on foot. On seeing the police party, the said person became perplexed and tried to run away towards the fields. On suspicion, he was apprehended and in that process, the bag, which he was carrying, fell down and when the police party tried to lift the same, intoxicant tablets were visible. On enquiry, the said persons disclosed his name as 'Pankaj Kumar' i.e. the present petitioner.

Learned counsel further submits that though on apprehension of the petitioner, a *ruqa* was sent to the police station for registration of the FIR, however, no Gazetted Officer was called at the spot.

Learned counsel further submits that though a second Investigating Officer, namely ASI Sulakhan Singh, was called at the spot, however, it will be a matter of trial whether the provisions of Sections 42 and 50 of the NDPS Act were complied with or not.

Learned counsel further submits that though the petitioner is named in another FIR No. 155 dated 17.05.2021, under Section 22 of the NDPS Act, Police Station Unna, wherein the petitioner, who was in judicial custody, was allegedly found in possession of some intoxicant tablets, however, apart from that, the petitioner is not involved in any other case prior to registration of the present FIR.

Learned State counsel, on the basis of the affidavit of the DSP, Sub Division Dera Bassi, has not disputed the factual position that prior to registration of the present FIR, the petitioner is not involved in any other case under the NDPS Act. Learned State counsel could also not dispute that no Gazetted Officer was called at the spot, however, it is submitted that a second Investigating Officer was deputed and further investigation was carried out by him.

Learned State counsel has filed the custody certificate, as per which, the petitioner is in judicial custody for the last more than 02 years and 04 months and out of total 11 prosecution witnesses, only 02 witnesses have been examined so far.

After hearing learned counsel for the parties, without making any comment on the merits of the case, considering the long custody of the

petitioner and also in view of the fact that for a considerable long time, the trial could not proceed due to COVID-19 situation and the second FIR, in which the petitioner is involved, relates to recovery of some intoxicant tablets when he was in judicial custody, the present petition is allowed and the petitioner is ordered to be released on regular bail, subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

15.11.2021

Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No