

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRM-M-1650-2022

Date of Decision:-09.02.2022

Sunil Kumar.

.....Petitioner.

Versus

State of Punjab.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Subhash Kumar, Advocate for the Petitioner.

Mr. Kirat Singh Sidhu, DAG Punjab.

JASJIT SINGH BEDI, J.(ORAL)

The Prayer in this petition is for the grant of regular bail under Section 439 Cr.PC in case FIR No.96 dated 16.08.2018 under Sections 22 of NDPS Act registered with Police Station Lambran, District Jalandhar.

Learned Counsel for the petitioner states that there has been violation of Section 50 of the NDPS Act in as much as the third option of search being conducted by the IO was also given. He also contends that the petitioner has been in custody for the last 3-1/2 years and even if he was convicted today for a period of 10 years, he would be entitled to bail after four years of incarceration in view of the judgment of **Daler Singh Vs. State of Punjab 2007(1) RCR (Criminal) 316**. In support of his contentions, learned Counsel for the petitioner placed reliance upon **Sukhwinder Singh Vs. State of Punjab 2020(2) RCR (Criminal) 605**, **Jagdeep Singh @ Jaggi Vs. State of Punjab 2019(3) RCR (Criminal) 760**, **Gurpreet Singh @ Mani Vs. State of Punjab 2019(3) RCR (Criminal) 225**, **Gurwinder Singh Vs. State of Punjab 2019(2) RCR (Criminal) 637** and **Baljinder Singh Vs. State of Punjab 2019(1) RCR**

(Criminal) 871.

Learned Counsel for the State on the other hand submits that Section 50 of the NDPS Act has not been violated because in the FIR the IO has only stated that he wants to conduct the search of the petitioner, but the petitioner had a legal right to be searched before some gazetted officer or Magistrate. He thus contends that third option of self search was not given. However, he admits that the search was actually conducted by the IO concerned. He also placed on record the custody certificate.

Having heard the rival contentions of both the parties, the violation of Section 50 of NDPS Act, if any would be a moot point during the course of trial. Admittedly, the petitioner has undergone a total period of 3-1/2 years of incarceration. There is no other pending case under the NDPS Act against the petitioner. Further out of 09 prosecution witnesses four witnesses have been examined and in the current Covid pandemic situation the trial is not likely to be concluded in the near future.

Therefore, without commenting upon the merits of the case, keeping in view the fact that the trial is not likely to be concluded in the near future, the present petition is allowed and the petitioner **Sunil Kumar** is ordered to be released on bail subject to the satisfaction of learned CJM/Duty Magistrate, Jalandhar.

It is further made clear that if petitioner indulges in similar offence for which he is currently charged, the State would be at liberty to move an application for cancellation of bail.

(JASJIT SINGH BEDI)
JUDGE

February 09, 2022

Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>