

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

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CRM-M-2533-2022

Date of Decision : **June 01, 2022**

AVTAR SINGH

.....Petitioner

VERSUS

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present : Mr. Vikas Gupta, Advocate
for the petitioner.

Mr. Randhir Singh Thind, DAG, Punjab.

JASGURPREET SINGH PURI. J. (Oral)

The present 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.99 dated 27.6.2021 under Section 18(c) of NDPS Act, 1985, registered at Police Station City Patti, District Tarn Taran.

The learned counsel for the petitioner has submitted that the petitioner is in custody from 27.6.2021 and the investigation of the case is already complete and the challan has been presented. He submitted that the petitioner has clean antecedents and is not involved in any other case and he is aged 74 years. He further submitted that due to political vendetta, the present case has been planted upon him. He submitted that a bare perusal of the FIR would show that although secret information was received but the provisions of Section 42 under the NDPS Act were not complied with. Apart from the same, the provisions of Section 50 under the NDPS Act were also not complied with because the offer which was given to the petitioner was defective. He further submitted that the offer to get himself searched either from a Gazetted Officer of the Punjab Government or in the presence of a Magistrate is contrary to Section 50 of the NDPS Act as according to Section 50 of NDPS Act the offer was

to be made for getting searched from a Gazetted Officer or in the presence of a Magistrate and, therefore, the offer itself was defective and rather the entire trial would get vitiated on this ground apart from the fact that Section 42 of NDPS Act which is also mandatory provision was also not complied with.

On the other hand, the learned State counsel has submitted that it is correct that the petitioner is in custody from 27.6.2021 and the investigation of the case has been completed. On a query being raised to the learned State counsel with regard to the compliance of provisions of Section 50 of NDPS Act, he submitted that as per the contents of the FIR there is nothing mentioned with regard to the reducing the information in writing but it is apparent from the FIR itself that after about 10 minutes of receiving of the information the petitioner had come at the spot. He further submitted that is also correct that the petitioner is not involved in any other case.

I have heard the learned counsels for the parties.

The petitioner is a person of the age of 74 years and he has clean antecedents as per the learned counsel for the parties and is not involved in any other case. In the present case, the alleged recovery is 2 kg 600 grams of opium in the polythene bag. The commercial quantity under the NDPS Act is 2 kg 500 grams. A perusal of the FIR would show that there is nothing to suggest that the mandatory provisions of Section 42 of NDPS Act were complied with. In addition to the same, a perusal of the FIR would show that offer was given to the petitioner to get himself searched in the presence of any Gazetted Officer of the Punjab Government or some Magistrate which is not in accordance with the provisions of Section 50 of NDPS Act. Therefore, this Court is of the view that even if the alleged recovery of 2 kg 600 grams of opium which falls in the category of commercial quantity and this quantity was weighed alongwith the polythene bag, there are reasons to believe that atleast at this stage prima facie no offence is made out in view of non-compliance of provisions of Sections 42 and 50 of NDPS Act. Apart

from the same, the petitioner is not involved in any other case and is of the age of 74 years and it is neither the case of the State and nor any argument has been raised by the learned State counsel that in case the petitioner is released on bail then he may influence the witnesses or may repeat the offence. Therefore, both the ingredients for making a departure from the bar contained under Section 37 of NDPS Act remain satisfied.

In view of the aforesaid position, the present petition is allowed. The petitioner is ordered to be released on bail on furnishing of bail bonds and surety bonds to the satisfaction of concerned Chief Judicial Magistrate/trial Court/Duty Magistrate.

However, anything observed here-in-above shall have no effect on the merits of the case and is meant for deciding the present petition only.

June 01, 2022
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(JASGURPREET SINGH PURI)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No