

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

211-B

CRM-M-4058-2022 (O&M)

Reserved on: 25.05.2022

Pronounced on: 27.05.2022

LOVENISH KUMAR @ LAVI

... Petitioner

Versus

STATE OF PUNJAB

... Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Dixit Garg, Advocate
for the petitioner.

Mr. Ajay Pal Singh Gill, DAG Punjab.

HARNARESH SINGH GILL, J.(Oral)

Through this petition, the petitioner seeks regular bail in case bearing FIR No.17 dated 20.01.2021, registered under Sections 21 and 22 of the NDPS Act, at Police Station Sadar Patiala, District Patiala.

Learned counsel for the petitioner submits that on 20.01.2021, the alleged recovery of 400 gram intoxicant powder and 100 gram smack was effected from near the hand-brake of the Swift car bearing registration No.PB-10-CY-2604, in which the petitioner was sitting; that the petitioner has nothing to do with the alleged recovery; that the petitioner has falsely been implicated in the present case and that the petitioner has been in custody since 20.01.2021. He further submits that there is non-compliance of the mandatory provisions of Section 42 of the NDPS Act, inasmuch as, the secret information was not recorded and sent in writing to the Senior Police official(s). On said premise, learned

counsel for the petitioner prays for grant of regular bail to the petitioner.

In support of his contentions, learned counsel for the petitioner relies upon the judgment passed by the Hon'ble Apex Court in Criminal Appeal No.1051 of 2009 titled Rajender Singh vs State of Haryana, decided on 08.08.2011.

Per contra, while opposing the prayer for grant of regular bail to the petitioner, learned State counsel does not dispute the custody period of the petitioner. He, however, submits that as per Schedule attached to the NDPS Act, the intoxicant of more than 50 grams of Diphenoxylate Hydrochloride, falls within the ambit of commercial quantity; that the recovery effected from the petitioner is a commercial quantity and keeping in view the rigors of Section 37 of the NDPS Act, the petitioner does not deserve the concession of regular bail. He further submits that the recovery was effected from the car, in which the petitioner was sitting and thus, it does not stand to any logic that the petitioner would not be aware of the substance put in the car. Still further, it is submitted that the petitioner is a habitual offender, inasmuch as, one more case of NDPS Act is registered and pending against him.

Learned State counsel further submits that the provisions of Section 42 of the NDPS Act were duly complied with, inasmuch as, a written communication dated 20.01.2021 at 11:15 a.m. was sent and the same is very much part of the challan. Thus, the judgment of the Hon'ble Apex Court in Rajender Singh's case (supra) is not applicable to the facts of the present case.

I have heard the learned counsel for the parties.

The recovery of the contraband effected from the car, in which the petitioner was sitting, falls under the commercial quantity and Section 37 of the NDPS Act bars the grant of bail to the accused in the case of commercial quantity. Moreover, as noticed above, pendency of one more FIR of similar nature, speaks volumes about the conduct of the petitioner, who is a habitual offender. Therefore, possibility of the petitioner, indulging himself in similar crime, if enlarged on bail, cannot be ruled out.

Therefore, I do not find any ground to grant concession of regular bail to the petitioner.

Dismissed.

27.05.2022

Aman Jain

(HARNARESH SINGH GILL)
JUDGE

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