

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

CRM-M No. 4898 of 2021 (O&M)

Date of Decision: 01.08.2022

Ashu Rehan

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Ruhani Chadha, Advocate for
Mr. Ankur Bansal, Advocate
for the petitioner.

Ms. Kanica Sachdeva, Assistant Advocate General, Punjab

MAHABIR SINGH SINDHU, J.

1. Present petition has been filed under Section 439 of Criminal Procedure Code for seeking regular bail, pending trial in FIR No. 121, dated 26.06.2019, under Section(s) 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short “the Act”), and Section(s) 25 & 29 of the Act, and Section 482 of the Indian Penal Code, 1860 (added later on), registered at Police Station Shahkot, District Jalandhar.

2. Allegations are that during *Naka (barricade)* put on 26.06.2019 at Salechan Pul, three persons were seen coming from Village Shekhewal on motorcycle bearing Regn. No. PB-08-CU-6272. Upon noticing police party, one person ran away from the spot and rest two persons were apprehended. The person, who was driving the motorcycle, disclosed his name as ***Ashu Rehan (petitioner herein)***, while second person told his name as ***Arvind Rehan*** and they also disclosed about third person as ***Jaswinder Singh @ Jassa***, who ran away from the spot. After conducting the search of motorcycle, *heroin* weighing 260 grams kept in a black plastic bag was recovered.

3. This Court, on 12.02.2021, granted interim bail to petitioner in the following manner:-

“ Contends that petitioner is in custody since 26.06.2019 and charges were framed on 09.01.2020 but till date, no prosecution witness has been examined.

Learned State counsel seeks time to verify the same.

Posted on 30.04.2021.

Let the petitioner be released on interim bail, till the next date of hearing, on his furnishing bail bond and surety bond to the satisfaction of learned trial Court/CJM/Duty Magistrate, concerned.”

4. Learned counsel for petitioner submits that recovery in this case is alleged to have been effected from three persons, but no separate offer was made to the petitioner at the time of search of plastic bag; rather a joint statement of all the accused was recorded by the seizing officer; thus there is violation of mandatory provision of Section 50 of “the Act”. He further submits that after grant of interim bail, petitioner has been regularly appearing before the Court below, but there is no progress of trial at all. Also contends that there is no apprehension or allegation that in case, petitioner is granted bail, he is likely to threat the prosecution witnesses or hamper the trial in any manner.

5. Learned State Counsel, on instructions from ASI Sukhwinder Singh, does not dispute the above factual position; rather acknowledged that out of 13 prosecution witnesses, only four (04) have been examined till date.

6. In view of the above, there is no hesitation to record twin-test satisfaction in terms of Section 37 of the Act to the following effect:-

(i) As noticed in para-6, *prima facie* there is a violation of Section 50 of the Act at the time of seizing the alleged

contraband; thus, it can be termed as a reasonable ground for believing that petitioner is not guilty of offence at this stage;

(ii) Petitioner was granted interim bail and has not misused the concession thereof; thus he is not likely to commit any offence in case released on regular bail.

7. In such a situation, sending the petitioner in custody at this stage would not serve any purpose. Consequently, the present petition is **allowed**. Interim bail granted to the petitioner, vide order dated 12.02.2021, is made absolute. He shall be admitted to bail on his furnishing bail/surety bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

8. Petitioner shall fully co-operate with the learned trial Court without seeking any unnecessary adjournments.

9. The above observations may not be construed as an expression of opinion on the merits of the case.

10. It is clarified that in case there is any misuse of concession of bail on the part of the petitioner, State of Punjab would be at liberty to move an appropriate application for recalling of this order.

11. Pending application(s), if any, shall also stand(s) disposed off.

August 01, 2022

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**(MAHABIR SINGH SINDHU)
JUDGE**

<i>Whether Speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>