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

CRM-M-4417-2022

Date of Decision: 28.03.2022

Shinderpal Singh

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. A.S. Brar, Advocate,
for the petitioner.

Mr. P.S. Walia, AAG, Punjab.

JASGURPREET SINGH PURI, J. (ORAL)

The present petition has been filed under Section 439 of the Cr.P.C. for grant of regular bail to the petitioner in case bearing FIR No.92 dated 20.06.2021, under Section 22 of the N.D.P.S. Act, 1985, registered at Police Station Kotlse Khan, District Moga.

Learned counsel for the petitioner has submitted that the petitioner is in custody from 20.06.2021 and investigation in the present the case has already been completed. He further submitted that the petitioner has clean antecedents and he is not involved in any other case and the present case is planted upon the petitioner primarily due to previous rivalry. He also submitted that as per the allegations a secret information was received by the Police and thereafter, the ASI had come on the spot and had

personally searched the petitioner and got recovered some currency notes from the shirt of the petitioner but there was no recovery of any contraband and the allegations which have been put in the present case, were that the petitioner was carrying some contraband in a plastic bag in his hand which he threw away and the ASI recovered the scattered tablets of *Etizolam* from the floor. Learned counsel for the petitioner further submitted that firstly, there was no recovery from the petitioner and secondly, once the Police on the basis of a secret information pertaining to the contraband, has searched the petitioner then it was incumbent upon the Police to have complied with the provision of Section 50 of the NDPS Act. He also submitted that it is not a case where search was made without any information regarding contraband but once there was a secret information regarding contraband then the mandatory provisions under Section 50 of the NDPS Act was required to be complied with. Learned counsel further relied upon the judgment of the Hon'ble Supreme Court in ***CRA No.870 of 2016*** titled as “**Sanjeev and another Vs. State of Himachal Pradesh**” decided on 09.03.2022 in this regard.

On the other hand, Mr. P.S. Walia, learned Assistant Advocate General, Punjab, has submitted that the petitioner is in custody from 20.06.2021 and there is a recovery of 35.1 grams of *Etizolam* tablets which falls in the commercial quantity. He further submitted that the case of the petitioner is hit by the bar contained under Section 37 of the NDPS Act.

I have heard the learned counsel for the parties.

The petitioner is in custody from 20.06.2021. In the present case as per the Report under Section 173 of the Cr.P.C., the ASI had a secret

information with regard to the contraband and still he carried on with the search on the person of the petitioner and from the shirt of the petitioner some currency notes were found but no intoxicant substance was found but allegedly the same was found from the floor which allegedly the petitioner had thrown away. Once a secret information was pertaining to some contraband/intoxicant tablets then it was incumbent upon the ASI to have complied with the provision contained under Section 50 of the N.D.P.S. Act which is mandatory in nature. Further, as far as Section 37 of the N.D.P.S. Act, is concerned, it is not absolute and is subject to just exceptions. The first ingredient with regard to exceptions would be that in case the Court has reason to believe that the petitioner is not guilty in offence and the second ingredient is with regard to likelihood of repeating the offence is also satisfied then a departure can be made from the bar contained under Section 37 of the N.D.P.S. Act. In the present case, at least at this stage, since it appears that the Section 50 of the N.D.P.S. Act has not been complied with and it is not the case of the State that in case the petitioner is released on bail then he may repeat the offence, and therefore, both the ingredients stand satisfied for the purpose of making a departure from the bar contained under Section 37 of the NDPS Act.

In view of the aforesaid position and coupled with the fact that the petitioner is not involved in any other case and has got clean antecedents, consequently, the present petition is allowed and the petitioner is ordered to be released on bail on furnishing bail bond/surety bond to the satisfaction of the trial Court/Duty Magistrate concerned, if not required in any other case.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is only meant for the purpose of decision of present petition.

28.03.2022

Bhumika

(JASGURPREET SINGH PURI)
JUDGE

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| 1. Whether speaking/reasoned: | Yes |
| 2. Whether reportable: | Yes/No |