

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

CRM NO.M-5043 OF 2022

DATE OF DECISION : 26.04.2022

Sajan Singh

...Petitioner

Versus

State of U.T. Chandigarh

...Respondent

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Charanpreet Singh, Advocate,
for the petitioner.

Mr. Abhinav Gupta, Addl. PP,
for U.T. Chandigarh.

ARUN MONGA, J. (ORAL)

Petitioner is before this Court seeking grant of regular bail in FIR No. 135 dated 11.07.2020 registered under Section 20 of the NDPS Act, Police Station Sector-36, Chandigarh.

2. Per prosecution, on 11.07.2020 at about 6.45 p.m., Sub Inspector Neeraj Kumar, along with fellow police officials, was on patrolling duty. When they reached near the parking of Lake, Sector-42, Chandigarh, they saw one person coming from the parking side who was carrying one yellow coloured bag in his right hand. On seeing the police party, he started walking towards the parking. On the basis of suspicion, he was apprehended. Upon checking the yellow bag, he found that something was wrapped in the newspaper. Upon opening the said newspaper, the same was found containing Charas in ball shape, flat shape and powdered form. Upon asking, the petitioner disclosed that he use to sell Charas to persons at the rate of Rs.4,000/- per 10 grams. The petitioner failed to produce any permit or license for keeping the said

contraband, which was taken into possession. The said contraband, on weighing, was found to be 2 kgs 200 grams. Accordingly, accused was arrested. Investigation was carried out. Challan was presented accordingly.

3. Learned counsel for the petitioner contends that false recovery has been planted upon the petitioner by the CIA staff by letting off one person who was already in detention. He further contends that no independent witness was joined though it was a public place. It is further contended that petitioner was arrested from the spot and he is in custody since then. Learned counsel submits that the petitioner has clean antecedents. Except the case in hand, the petitioner is not involved in any other case. He submits that no useful purpose would be served by keeping the petitioner in preventive custody any more.

4. Learned counsel for the petitioner relies on Apex Court judgment dated 09.03.2022 passed in Criminal Appeal No.870 of 2016 titled as “**Sanjeev and another v. State of Himachal Pradesh**” and argues that the fact that non-association/involvement of a Gazetted Officer at the time of seizing the contraband is *per se* fatal to the entire trial and would result in acquittal of the petitioner.

5. Per contra, learned State counsel opposes the bail plea. According to him, the petitioner was caught red handed with the contraband weighing 2 Kg 200 grams, which falls under the category of ‘commercial quantity’ and rigors of Section 37 of NDPS Act are applicable in the present case. There is every apprehension that he might again indulge in similar offence, if released on bail.

6. I have heard the rival contentions of the respective learned counsels.

7. The contentions of learned counsel for petitioner, as noted aforesaid, may have substance but same can only be adjudged at the trial. The plea of conscious possession has also to be adjudicated at the trial. The petitioner is in custody since 11.07.2020. He is not involved in any other case. Investigation is already over, charges have been framed and the case before the trial court is now fixed for prosecution evidence. The trial is not likely to conclude anytime soon in view of the situation that has arisen due to pandemic.

8. All the prosecution witnesses are police officials. There thus seems no apprehension that petitioner would influence or pressurize the witnesses.

9. Considering the overall scenario, without commenting on the merits of the case, this petition is allowed. I am of the view that no useful purpose would be served to keep the petitioner in further preventive custody.

10. Accordingly, petitioner shall be released on bail on his furnishing bail bonds and surety bonds to the satisfaction of trial Court, where his case is being tried and in case he/she is not available, before learned Duty Judge, as the case may be.

11. It is, however, made clear that in case the petitioner is found involved in any other case of similar nature while on bail, the prosecution shall be at liberty to seek cancellation of his bail.

APRIL 26, 2022
Shalini

(ARUN MONGA)
JUDGE

Whether speaking/reasoned :
Whether reportable :

Yes/No
Yes/No