

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

218

CRM-M-9179-2022
Date of decision: 10.05.2022

NEERAJ KUMAR @ RISHU

....Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present : Mr. M.S. Sidhu, Advocate
for the petitioner.

Ms. Amarjit Kaur Khurana, DAG, Punjab.

VINOD S. BHARDWAJ. J. (ORAL)

The instant petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 by the petitioner for seeking concession of regular bail in case bearing FIR No. 43 dated 03.03.2021 registered under Section 22 of the Narcotic Drugs and Psychotropic Substances, Act 1985, Police Station Fatehgarh Sahib, District Fatehgarh Sahib.

2. Briefly the case of the prosecution is that the petitioner was apprehended by patrolling party on the alleged suspicion of some intoxicant substance. The search of the petitioner is claimed to have been conducted at the option of the petitioner, in the presence of Manjit Singh, DSP, Fatehgarh Sahib. It is the case of the prosecution that upon search of the petitioner, 12 injections make Buprenorphine of 2 ml each, 7 vials make Avil of 10 ml each and certain other injections were received from the possession of the petitioner. It is also noticed that the injections were not having any batch number or date of

manufacturing or date of expiry. The said injections were put into polythene bag and were taken in possession by the Investigating Agency.

3. Learned counsel for the petitioner contends that the petitioner is in custody since 06.03.2021 and that in the absence of any date of manufacturing and batch number of date of expiry, it is yet to be ascertained whether the injections were actually contraband within aegis of the NDPS Act or not. He submits that the report of the FSL with respect to the contents of the contraband has not been received so far. It is also argued that even though investigation in the case is complete and the charges were framed on 16.12.2021, however, no witness has been examined so far. The warrants were issued for presence of the prosecution witness namely ASI Harinder Singh for no valid reasons as the said prosecution witness had not appeared before the Court to depose.

4. Learned Counsel for the State has pointed out that the recovery in question is of commercial quantity and that the petitioner is also involved in other cases under the NDPS Act. It is however not disputed by the learned State counsel that the petitioner has undergone an actual custody of 01 year, 02 months and 03 days in the instant case and that he is not on bail in other cases. A mere grant of the concession in the instant case would not entitle the petitioner to be released from custody in such that he has not been granted bail in the other matters. It is also pointed out by learned State counsel is that so far as FIR No. 111 dated 23.06.2013 registered under Section 22 of the NDPS Act at Police Station Fatehgarh Sahib, is concerned the petitioner was

acquitted by Additional Sessions Judge, Fatehgarh Sahib vide judgment dated 08.03.2018 and in FIR No. 181 dated 10.11.2018 registered under Section 27 of the NDPS Act at Fatehgarh Sahib, he has already undergone a sentence of fine imposed upon him by the Judicial Magistrate First Class, Fatehgarh Sahib. It is also not controverted by the learned counsel appearing on behalf of the State that the chemical report with respect to the contents of the contraband alleged to have been seized as far has not been received, even though, the petitioner has undergone custody of more than 01 year and 02 months.

5. I have heard learned counsel appearing on behalf of the respective parties and have gone through the record with their assistance.

6. Taking into consideration and submissions noticed above as also that the quantity of contraband is yet to be determined, the present petition is allowed.

7. The petitioner is directed to be released on interim bail on his furnishing requisite bail bond/surety bond to the satisfaction of the Trial Court/Duty Magistrate, concerned till the receipt of the report of the Chemical Examiner and in case the quantity is found to be commercial in nature, the petitioner shall surrender before the trial Court and seeks further determination to move a fresh petition.

(VINOD S. BHARDWAJ)
JUDGE

MAY 10, 2022
vishal sharma

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No