

CRM-M-9222-2022 (O&M)

253

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

CRM-M-9222-2022 (O&M).
Decided on : July 12, 2022.

Prem Lal

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

**PRESENT: Mr.Laghuinder Singh Sekhon, Advocate,
for the petitioner.**

Mr.J.P.Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN, J. (ORAL)

This is the second petition filed under Section 439 Cr.P.C. praying for the grant of regular bail to the petitioner in FIR No.121 dated 10.9.2017, under Section 22 of the Narcotic Drugs and Psychotropic Substance Act, registered at Police Station Kot Ise Khan, District Moga.

Learned counsel for the petitioner submits that earlier petition filed by the petitioner for the grant of regular bail was dismissed as withdrawn vide order dated 8.9.2021 passed in CRM-M-17660-2020 and

CRM-M-9222-2022 (O&M)

the new ground for filing the present petition for the grant of regular bail by the petitioner is that custody period of the petitioner as on today is 2 years and 11 months and till date no PW has been examined.

Counsel for the petitioner further submits that as per the allegations in the FIR registered at the instance of ASI Balbir Singh, it is stated that while on patrolling along with his co-police officials, a motorcycle rider was seen coming who on seeing the police party became perplexed and tried to ran away, however, he was apprehended and disclosed his name as Prem lal (**petitioner**). Thereafter, notice under Section 50 of the NDPS Act, was served giving him an option to be searched before a Magistrate or a Gazetted Officer. However, the petitioner reposed faith on the same investigating officer and thereafter, he conducted the search as well as personal search and recovery of 260 grams of alprazolam power was effected.

Counsel for the petitioner submits that it will be a matter of trial whether the same investigating officer can be the complainant and conduct the personal search of the petitioner by following a proper procedure and as the information was sent to the Police Station after completing the search of the petitioner and therefore, it will be a matter of trial whether Section 42 of the NDPS Act, has been complied with or not and similarly, in the absence of calling a Magistrate or Gazetted officer at the spot, it will again be a matter of trial whether Section 50 of the NDPS Act, has been followed when personal search of the petitioner was conducted by the investigating officer

CRM-M-9222-2022 (O&M)

himself.

Learned State counsel could not dispute the factual position on the basis of the custody certificate. It is also not disputed that till date no PW has been examined

After hearing the learned counsel for the parties and considering the aforesaid facts, the present petition is allowed. The petitioner is directed to be released on bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaqa Magistrate/Duty Magistrate.

However, it will be open for the prosecution to apply for cancellation of bail of the petitioner, in case he is found involved in any other case or misusing the concession of bail, in any manner.

July 12, 2022.

raj arora

(ARVIND SINGH SANGWAN)

JUDGE

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No