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

CRM-M No.11711 of 2022 (O&M)

Date of decision: 21.07.2022

Sudesh Kumar

....Petitioner

Versus

U.T. Chandigarh

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. A.P. Kaushal, Advocate
for the petitioner.

Mr. Avinash Kumar, Advocate
for Mr. Kuldeep Tewari, APP, U.T., Chandigarh.

ARVIND SINGH SANGWAN J. (Oral)

Prayer in this 2nd petition is for grant of regular bail to the petitioner under Section 439 of the Code of Criminal Procedure (in short 'Cr.P.C.') in FIR No.234 dated 21.12.2020, registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') at Police Station Sector 31, Chandigarh.

Counsel for the petitioner has argued that the new ground for filing this petition is that the petitioner is in custody for the last 01 year and 07 months and out of 15 PWs, only 03 PWs have been examined, so far.

Brief facts of the case are that the FIR was registered at the instance of SI Lakha Singh that while on petrol duty, the petitioner was apprehended on the basis of suspicion, who was seen coming on foot carrying a polythene bag and became perplexed on seeing the police party. On asking, he disclosed his name as Sudesh Kumar. Thereafter,

the complainant/SI himself checked the bag and found 13 injections of Buprenorphine, 13 injections Pheniramine Maleate, 80 tablets of Alprazolam and 24 capsules of Spamo Proxyvon Plus and thereafter, the personal search of the petitioner was also conducted but nothing was found. A perusal of the FIR further show that after the entire recovery, the proceedings were conducted and the memos were prepared at the spot and only then, a ruqa was sent to the Police Station for registration of the FIR through Constable Deepak Kumar.

Counsel for the petitioner has further argued that it will be a matter of trial whether after the arrest of the petitioner, the information in compliance of Section 42 of the NDPS Act was to be sent to the Police Station/higher police official immediately and secondly, when the personal search of the petitioner was conducted, the compliance of Section 50 of the NDPS Act was required and it is a case where the complainant himself is the Investigating Officer, who completed the entire investigation himself and only thereafter, sent a ruqa to the Police Station and therefore, it is a matter of trial whether Sections 42 and 50 of the NDPS Act have been properly complied with or not.

Counsel for the State on the basis of the Custody Certificate has not disputed the factual position but opposed the prayer for bail on the ground that the petitioner is involved in 02 more cases though, he is on bail.

Without commenting anything on merits of the case, considering the fact that the petitioner is in custody for the last 01 year, 07 months; the custodial interrogation of the petitioner is not required;

the trial needs to be conducted in the light of violation of Sections 42 and 50 of the NDPS Act and the conclusion of the trial will take some time as out of 15 PWs, only 03 PWs have been examined so far, this petition is allowed and 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.

(ARVIND SINGH SANGWAN)
JUDGE

21.07.2022
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No