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

CRM-M-17909-2021 (O&M)

Date of Decision: 29.04.2022

Vinay Sharma @ Sinu

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

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

Mr. Naveen S. Panwar, DAG, Haryana.

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.137 dated 22.02.2021, under Sections 20/61/85 of the N.D.P.S. Act, 1985, registered at Police Station Sector-7, District Faridabad (Haryana).

Learned counsel for the petitioner has submitted that the petitioner is in custody from 7½ months and the petitioner was earlier granted interim bail by this Court in view of the law laid down by a Division Bench of this Court in “**Inderjeet Singh @ Laddi and others Vs. State of Punjab**”, 2014 (3) RCR (Criminal) 953, since the FSL report was awaited and thereafter on the receipt of the FSL report, the petitioner had surrendered on 08.12.2021 and is in custody. Learned counsel for the petitioner further submitted that the petitioner is not involved in any other case and has got clean antecedents and as per the case of the petitioner,

there was a recovery of 1 Kg. 400 grams of *Charas* from the petitioner and the offer to the petitioner under Section 50 of the N.D.P.S. Act was defective and such a defective offer would vitiate the entire trial. He however has referred Annexure P-2, which was a notice under Section 50 of the N.D.P.S. Act which would show that an offer was given to be searched by Police or through any Gazetted Officer which is a total violation of Section 50 of the N.D.P.S. Act as the offer ought to have been given for getting searched from a Gazetted Officer or from a Magistrate. He has further relied upon the judgment of this Court passed in “*Mohan Singh Vs. State of Punjab*”, 2004 (4) RCR (Criminal) 260 and also upon the judgment of the Hon'ble Supreme Court passed in “*State of Rajasthan Vs. Parmanand and another*”, 2014(2) RCR (Criminal) 40, in this regard.

On the other hand, Mr. Naveen S. Panwar, learned Deputy Advocate General, Haryana has submitted that the alleged quantity of 1.400 Kgs. of *Charas* falls under the commercial quantity. He further submitted that all the prosecution witnesses have been examined and the prayer of the petitioner is barred by Section 37 of the N.D.P.S. Act

I have heard the learned counsel for the parties.

Although the alleged recovery was 1 Kg. 400 grams of *Charas* but the notice under Section 50 of the N.D.P.S. Act vide Annexure P-2 wherein only a partial offer was given, cannot be ignored and it would, therefore, constitute a ground for making a departure from the bar contained under Section 37 of the N.D.P.S. Act. This Court without making any observation on the merits of the case and only for the purpose of considering the bail petition at the *prima facie* view, is satisfied that there

are reasons to believe that the petitioner is not guilty in offence at least at this stage, apart from the same, it is not the case of the State that in case the petitioner is released on bail then he may repeat the offence or may abscond or flee from justice specially in view of the fact that the petitioner is not involved in any other case and has got clean antecedents. Therefore, both the ingredients contained under Section 37 of the N.D.P.S. Act, remained satisfied for the purpose of making a departure from the bar contained under Section 37 of the N.D.P.S. Act.

In view of the aforesaid position, this Court is of the view that it is a fit case to grant regular bail to the petitioner, 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.

29.04.2022*Bhumika***(JASGURPREET SINGH PURI)
JUDGE**

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