

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CRM-M-23075-2022

Date of Decision: 29.7.2022

Sukhwinder Singh @ Honey

....Petitioner

VERSUS

State of Punjab

....Respondent

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Anil Kumar Garg, Advocate
for the petitioner.

Ms. Jaspreet Kaur, AAG, Punjab.

KARAMJIT SINGH, J.

The present petition has been filed under Section 439 Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No.98 dated 4.11.2020 registered for the offences punishable under Section 21 NDPS Act and Sections 379-B, 341, 411, 323, 34 IPC at Police Station City Kurali, District SAS Nagar.

Counsel for the petitioner submits that as per allegations in the FIR, intoxicating powder containing Diphenoxylate Hydrochloride weighing 60 grams was recovered from the pocket of the petitioner. He further contends that as per prosecution version, the aforesaid recovery was effected from the personal search of the petitioner by the investigating officer who was holding the rank of ASI. He further contends that the aforesaid recovery was effected in total non-compliance of Section 50 of NDPS Act inasmuch as no offer for search before the Gazetted Officer or a Magistrate was given to the petitioner. Counsel for the petitioner made

prayer that as there is violation of the mandatory provisions of NDPS Act, the petitioner is entitled to the grant of regular bail as has already been extended to co-accused Kamalpreet Singh vide order dated 6.1.2022 passed in CRM-M-11560-2021 by the Coordinate Bench of this Court.

State counsel while opposing the present petition, submits that the aforesaid recovery of 60 grams of intoxicating powder comes under commercial quantity as per provisions of NDPS Act. However, the State counsel failed to refute the fact that in the present case, personal search of the petitioner which resulted into aforesaid recovery was not effected in the presence of Gazetted Officer.

I have considered the submissions made by the counsel for the parties.

In view of above, as there apparently appears to be non-compliance of the mandatory provisions of Section 50 of NDPS Act and the petitioner being behind bars for the last more than 2 years and 3 months and it will take time for the trial to conclude, this Court is of the view that no useful purpose is going to be served by keeping the petitioner in custody for any further period.

In view of the above, without commenting on the merits of the case, the present petition is allowed and the petitioner is ordered to be released on bail subject to his furnishing bail bonds/surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

(KARAMJIT SINGH)
JUDGE

July 29, 2022

Paritosh Kumar

PARITOSH KUMAR
2022.07.31 21:46
I attest to the accuracy and
authenticity of this order/judgment

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No