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IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRM-M-25762-2022  
Date of decision: 18.10.2022

KRISHAN

...Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Amit Choudhary, Advocate  
for the petitioner.

Ms. Kirti Singh, DAG, Haryana.

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**JAISHREE THAKUR, J. (Oral)**

This is the second petition filed under Section 439 Cr.P.C. for grant of regular bail in case FIR No.0060 dated 06.03.2021, under Sections 17(c) and 27-A of the NDPS Act, registered at Police Station Uklana, District Hisar, Haryana.

Learned counsel for the petitioner herein would contend that the petitioner is in custody since 06.03.2021, on the allegation that there is a recovery of 3 kgs and 340 grams of opium, which is more than the commercial quantity of 2.5 kgs. It is argued that there is non-compliance of Section 42 of the NDPS Act insofar as the report was not sent to the person who was superior in rank. He would rely upon the FIR itself, wherein it is submitted that “ I, Sub-Inspector Satbir Singh along with ASI Seema Rani and others, on a secret information came to know that Krishan S/o Tulshi Ram Bishnoi was

engaged in the business of selling opium and if raid is conducted, he can be caught with opium.” The information ought to have been sent as envisaged under Section 42 of the NDPS Act to a senior official. It is also argued that the trial in this matter is being delayed unnecessarily for want of the prosecution witnesses being present in Court as and when summoned. He would rely upon the zimni orders of the trial Court as produced in Court. It is submitted that 18 prosecution witnesses have been cited, out of which only 8 have been examined and the trial is not likely to conclude within a short span of time. He would also rely upon the latest judgment of the Supreme Court in **Mohammad Salman Hanif Shaikh versus The State of Gujarat, Special Leave to Appeal (Crl.) No.5530 of 2022**, decided on **22.08.2022**, wherein even under the NDPS Act, regular bail has been allowed keeping in view the length of custody of the petitioner therein.

Per contra, learned State counsel would oppose grant of regular bail to the petitioner by contending that the petitioner has four other matters against him and, therefore, he does not deserve the concession of regular bail. She, however, does not dispute the factual position.

I have heard learned counsel for the parties and have also perused case file.

Without commenting on the merits of the case and keeping in view of the fact that the petitioner is in custody since 06.03.2021 and that the trial is being delayed only on account of prosecution witnesses not being present on the date so summoned, no useful purpose would be served in keeping the petitioner behind bars any longer. The instant petition is allowed and the petitioner is directed to be released on regular bail subject to his furnishing the

personal as well as surety bonds in the sum of Rs.2,00,000/- each to the satisfaction of concerned trial Court/Duty Magistrate.

The question whether or not there is non-compliance of Section 42 of the NDPS Act in the instant case, would be decided by the trial Court itself.

However, anything observed or said by this Court is only for the purpose of deciding the instant petition and the same shall have no effect on the merits of the case.

18.10.2022  
Chetan Thakur

(JAISHREE THAKUR)  
JUDGE

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|-----------------------------|-----|----|
| Whether speaking/reasoned : | Yes | No |
| Whether Reportable :        | Yes | No |