

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

210

**CRM-M-37891-2021 (O&M)
Date of decision: 10.05.2022**

JASWINDER SINGH @ KAKA

....Petitioner(s)

Versus

STATE OF PUNJAB

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present : Mr. Sahil Puri, Advocate
for the petitioner.

Ms. Amarjit Kaur Khurana, DAG Punjab.

VINOD S. BHARDWAJ. J. (ORAL)

The instant petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No.158 dated 03.07.2019 under Sections 21/61/85 of the NDPS Act registered at Police Station City Phagwara, District Kapurthala.

Learned counsel for the petitioner *inter alia* contends that as per the case of the prosecution, the petitioner was apprehended at intersection of T Chahal Nagar Palahi Road in his car bearing registration No.PB-3-CH-0306 make Honda Accord and upon suspicion a search was conducted whereupon 300 grams of heroin was recovered from the left pocket of the trouser worn by him. Learned counsel for the petitioner argues that the recovery in question is shrouded by suspicious circumstances. He submits that there was no *nakabandi* or patrolling being undertaken by the Police and that there was no occasion for the Police to have stopped the vehicle driven by the petitioner. He contends that the Police first

stopped the vehicle without any suspicion and thereafter a defective offer was made to the petitioner inasmuch as it was narrated in the same that the petitioner could get his search conducted either through the Investigating Officer or through a Gazetted Officer or a Magistrate. He thus submits that there is material non-compliance of the mandate of Section 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985. It is also argued by him that the said provision being mandatory, non-compliance thereof would vitiate the recovery. It is also pointed out that the initially the concession of anticipatory bail was granted to the petitioner, subject to the report of the FSL and that upon the report so being received, he surrendered before the trial Court without any delay. It is also submitted that the petitioner did not misuse the concession so extended in his favour. He points out that the petitioner has undergone an actual custody of 01 year 01 month and 02 days. It is also pointed out that the trial has not yet commenced and even the charges in the case have not been framed so far.

Ms. Amarjit Kaur Khurana, DAG Punjab has however pointed out that the petitioner is involved in the drug trade and that recovery of commercial quantity of heroin was effected from his conscious possession. It is submitted that the offer so made by the Investigating Officer in terms of Section 50 of the NDPS Act, mentioned that the search could be conducted by the Investigating Officer himself, however, an option was exercised by the petitioner to get his search conducted from a Gazetted Officer, whereafter a Gazetted Officer was called at the spot and the search and seizure was carried out in the presence of the Gazetted Officer. Resultantly, no prejudice is caused to the petitioner as a result of the claimed defective offer. The recovery in question thus would not stand vitiated on the said point alone. She further contends that the petitioner is involved in 02 other

cases under the NDPS Act and hence suffers from criminal antecedents. It is however not disputed by her that the petitioner has undergone actual custody of 01 year 01 month and 02 days and that during the period of interim concession granted by this Court, awaiting the outcome of the FSL report, the petitioner did not misuse the same and did not indulge in any offence.

Learned counsel for the petitioner has controverted the allegations to contend that one FIR No.163 dated 26.08.2018 registered at Police Station City Phagwara under Section 22 of the NDPS Act pertained to the period prior to the registration of the instant case and the petitioner is already on bail in the said case. Insofar as FIR No.1 dated 01.01.2022 is concerned registered at Police Station City Hoshiarpur under Section 22 of the NDPS Act, the said FIR has been registered at the time when the petitioner was already in the police custody and as such, the same is apparently based on a confession and not on the basis of any disclosure leading to recovery of any contraband. The same cannot thus be said to be commission of an offence by the petitioner.

I have considered rival submissions advanced by the learned counsel for the parties and have perused the material on record.

Without going into the aspect as to the legality of the procedure and compliance of Section 50 of the NDPS Act at this stage and noticing that the same may not *prima facie* show any prejudice to the search and seizure, but taking into consideration the fact that the petitioner has already suffered an actual custody of 01 year 01 month and 02 days and that charge is yet to be framed and conclusion of trial is likely to take long time; the petitioner is already on bail in the other case, I deem it appropriate to enlarge the petitioner on bail.

Accordingly, the present petition is allowed and the petitioner is

admitted to regular bail subject to his furnishing bail bonds/surety bonds to the satisfaction of Trial Court/Duty Magistrate, concerned.

It is made clear that the petitioner shall not extend any threat and shall not influence any prosecution witnesses in any manner directly or indirectly.

The observation made hereinabove shall not be construed as an expression on the merits of the case and the Trial Court shall decide the case on the basis of available material.

(VINOD S. BHARDWAJ)
JUDGE

May 10, 2022

S.Sharma(syr)

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>