

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

206

CRM-M-37645-2021

Date of Decision : **February 11, 2022**

Hari Yadav @ Hariya

.....Petitioner

VERSUS

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Through Video Conferencing

Present : Mr. M.S.Rana, Advocate
for the petitioner.

Mr. C.L.Pawar, Sr. Deputy A.G., Punjab.

JASGURPREET SINGH PURI. J. (Oral)

Reply has been filed by the State which is taken on record.

The present 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.234 dated 24.10.2020 under Sections 18/61/85 NDPS Act registered at Police Station Lohian, District Jalandhar.

It has been submitted by the learned counsel for the petitioner that in the present case the alleged recovery was of 2 kgs and 600 grams of Opium from the petitioner which is marginally higher than that of commercial quantity which is defined as 2 kgs and 500 grams under the NDPS Act. He submitted that although the quantity falls in the category of commercial quantity which is marginally higher but in view of the facts and circumstances of the case, the petitioner may be

considered for the grant of regular bail. He submitted that the petitioner is not involved in any other case and has clean antecedents. He referred to para No.5 of the reply filed by the State in which it has been stated that the petitioner was carrying a bag in his left hand and, therefore, no personal search was required and, therefore, Section 50 NDPS Act was not applicable. He further submitted that it was a case where Section 50 NDPS Act was applicable but the same has been admittedly not complied with. He submitted that in view of the aforesaid position, the rigor of Section 37 NDPS Act will not apply in the present case. He further submitted that the petitioner is in custody from 24.10.2020 which is more than one year and the petitioner has clean antecedents and, therefore, he may be considered for the grant of regular bail. He has further pointed out that as per the FIR, when information was received by Sub Inspector at Police Station from the patrolling party, the provision of Section 42 NDPS Act was not complied with as information was not taken down in writing in Register and, therefore, neither Section 50 NDPS Act nor Section 42 NDPS Act has been complied with.

On the other hand, the learned State counsel has stated that so far as the custody of the petitioner is concerned, the same is correct and it is also correct that the petitioner is not involved in any other case. However, he has submitted that Section 50 NDPS Act was not required to be complied with in the present case.

I have heard the learned counsels for the parties.

The petitioner is in custody for more than one year and the matter is fixed for prosecution evidence as per the learned counsel for the

parties. The petitioner was holding a bag in his hand as per the allegations and Section 50 of NDPS Act was not required to be complied with as per the stand taken by the State. On being asked whether the provision of Section 42 NDPS Act was complied with or not, the learned State counsel was not able to answer the same. The alleged recovery from the petitioner was 2 kgs and 600 grams of Opium which is marginally higher than the commercial quantity.

A perusal of the affidavit filed by the State as well as the FIR itself would show that when Sub-Inspector who was in Police Station received information from Head Constable regarding a person having bag in his hand, he alongwith police party proceeded towards the spot. However, there is nothing to show that such an information was taken in writing in the Register in compliance with Section 42 of NDPS Act. The State counsel was also not able to show whether it was done or not. The non-compliance of mandatory provisions of Section 42 raises suspicion. Law with regard to the same has been laid down by the Hon'ble Supreme Court in **Karnail Singh Vs. State of Haryana, 2009(5) RCR (Criminal) 515.**

In view of the above, the bar under Section 37 NDPS Act will not apply at this stage as there are reasons to believe that petitioner is not guilty. Further-more, petitioner is not involved in any other case as per both the learned counsels.

Consequently, the present petition is allowed. The petitioner is ordered to be released on bail on furnishing of bail bonds and surety bonds to the satisfaction of concerned Chief Judicial Magistrate/trial

Court/Duty Magistrate.

However, anything observed here-in-above shall have no effect on the merits of the case and is meant for deciding the present petition only.

February 11, 2022
ajay-1

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking/reasoned. : Yes/No
Whether Reportable. : Yes/No