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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-37235-2022
Date of decision: 18.10.2022

SANDEEP SINGH ALIAS SUNNY

...Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Akshay Chadha, Advocate
for the petitioner.

Mr. Mohit Kapoor, Addl. A. G., Punjab.

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.0061 dated 31.07.2021, under Sections 22 and 25 of the NDPS Act, 1985 registered at Police Station Jodhan, Ludhiana Rural, District Ludhiana, Punjab.

Learned counsel for the petitioner herein would contend that the petitioner is entitled to grant of regular bail since there is non-compliance of Section 42 and Section 50 of the NDPS Act as no special report has been sent to the superior officer nor the search was done in the presence of a Magistrate or a Gazetted Officer. He would submit that out of 12 prosecution witnesses cited, only 2 have been examined. He would rely upon the judgment of this Court in **CRM-M-35981 of 2020**, titled as **Malkiat Singh versus State of Punjab**,

decided on 05.03.2021, wherein in similar circumstances, the concession of bail was allowed to the petitioner therein. 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 there is a consent memo, whereby the petitioner herein has given his consent to his personal search. He, 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 the principles laid down in *Criminal Appeal No.273 of 2007*, titled as *Arif Khan alias Agha Khan versus The State of Uttrakhand*, wherein it is held that it is mandatory to have a personal search in the presence of a Magistrate or a Gazetted Officer and non-compliance of the said requirement would vitiate the search, the petitioner deserves to be released on bail. The petitioner is in custody since 31.07.2021, the trial is likely to take long time to conclude and 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.

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

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