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

CRM-M No.41361 of 2021 (O&M)

Date of decision: 04.08.2022

Bittu Singh @ Baba

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. L.S. Sekhon, Advocate
for the petitioner.

Mr. Deepak Grewal, DAG, Haryana.

ARVIND SINGH SANGWAN J. (Oral)

Prayer in this 2nd petition is for grant of regular bail to the petitioner under Section 439 of the Code of Criminal Procedure (in short 'Cr.P.C.') in FIR No.203 dated 25.08.2020, registered under Sections 22(C), 27(A) and 31 of the NDPS Act, at Police Station City Ratia, District Fatehabad.

The earlier one was disposed of by granting interim bail awaiting the report of the FSL and after the report of the FSL was received, the petitioner surrendered before the trial Court and has not misused the concession of bail.

Counsel for the petitioner has submitted that as per the allegations in the FIR, registered at the instance of ASI Harpal Singh, while on petrol duty, a TATA ACE vehicle was stopped, which was driven by the petitioner Bittu @ Baba, and co-passenger was Sandeep. On suspicion that they may be carrying some intoxicant tablets, a notice

under Section 50 of the NDPS Act was given, on which both of them gave their consent to be searched before a Gazetted Officer and thereafter, an information was sent and the Block Development and Panchayat Officer came at the spot and in his presence, the search was conducted and recovery of 5000 tablets of TRAMADOL HYDROCHLORIDE were effected. It is further submitted that a perusal of the FIR itself show that from the time, the vehicle of the petitioner was stopped and till the entire recovery proceedings were initiated, the different memos including the memo of recovery, personal search memo, etc. were prepared at the spot. It was only thereafter, a ruqa was sent to the Police Station for registration of the case and therefore, it will be a debatable issue to be decided during the course of trial whether Section 42 of the NDPS Act has been properly complied with or not. It is also argued that Harpal Singh is the complainant in the FIR and no second Investigating Officer was called at the spot because ruqa was sent only after the investigation and not at the time when the petitioner was apprehended on suspicion. Lastly, it is argued that the petitioner is in custody for the last 01 year and 08 months and he is not involved in any other case and even when he was on interim bail, he has not misused the concession of bail and the case before the trial Court, is now fixed for framing of charge and only thereafter, 20 PWs will be examined.

Counsel for the State on the basis of the Custody Certificate has not disputed the factual position but opposed the prayer for bail.

Without commenting anything on merits of the case,

considering the fact that the petitioner is in custody for the last 01 year and 08 months; he has not misused the concession of interim bail; the petitioner is not involved in any other case; the custodial interrogation of the petitioner is not required and the conclusion of the trial will take some time as 20 PWs will be examined after framing of the charge, this petition is allowed and the petitioner is directed to be released on bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaqa Magistrate/Duty Magistrate.

However, it will be open for the prosecution to apply for cancellation of bail of the petitioner, in case he is found involved in any other case or misusing the concession of bail, in any manner.

(ARVIND SINGH SANGWAN)
JUDGE

04.08.2022
yakub

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No