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

CRM-M No.43763 of 2020 (O&M)

Date of decision: 05.04.2022

Sandesh Kumar

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Sushil Sheoran, Advocate
for the petitioner.

Mr. Himmat Singh, DAG, Haryana.

ARVIND SINGH SANGWAN J. (Oral)

Prayer in this 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.128 dated 18.04.2020, for offence punishable under Section 21(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') registered at Police Station I.M.T., Rohtak, District Rohtak.

Counsel for the petitioner has submitted that as per the allegations in the FIR, registered at the instance of SI Mohinder Singh, he received a secret information that in a car bearing registration No. HR-21-N-6825, two boys namely Manjeet Singh @ Kala and Sandesh Kumar are coming from Delhi to Rohtak and they are carrying Heroin and if a barrier is put, they can be apprehended along with the

contraband. Thereafter, a notice was sent to the Police Station for registration of the FIR in compliance of Section 42 of the NDPS Act. After some time, the aforesaid vehicle was seen coming from Delhi side and the same was stopped. Thereafter, the driver of the said vehicle disclosed his name as Sandesh Kumar @ Golu, i.e. the present petitioner and the co-passenger of the same, disclosed his name as Manjeet @ Kalia. On suspicion, a notice under Section 50 of the NDPS Act was given in which it was stated that *“you are carrying some narcotic in transparent bag on your thigh and the police has suspicion that it is containing narcotic substance”*. Upon notice, the petitioner – Sandesh Kumar, gave an option to be searched before the Gazetted Officer. Similar was the consent given by the co-accused Manjeet @ Kalia.

Counsel for the petitioner has shown the vernacular of the recovery memo to submit that the same was recorded at 05:30 AM and it bears the details of FIR No.128 dated 18.04.2020 under Section 21(c)/61/85 of the NDPS Act Police Station I.M.T. Rohtak.

Counsel for the petitioner has then referred to the FIR to submit that the FIR was registered at 07:50 AM and in the recovery/seizure memo, it was recorded as 05:30 AM, about 02:00 Hrs., therefore, prior to registration of the FIR, the details of the FIR are already mentioned.

Counsel for the petitioner has further submitted that the aforesaid fact raises a suspicion about the investigation conducted by the police party. It is next argued that as per the inventory of the case property prepared in the presence of the Illaqa Magistrate, on

18.04.2020 when the accused persons were produced before him by the Investigating Officer, 02 samples of 54 gms. each were taken and put into small plastic jars and they are put into white cloth and the same were sealed. Counsel for the petitioner with reference to the FSL report, dated 28.05.2020 has submitted that as per the report, the weight of samples were found to be 54 gms. along with polythene bag, though, there is no mention in the inventory by the Illaqa Magistrate that the same were kept in a plastic bag rather, it is mentioned that the same were kept in plastic jars. It is also submitted that the petitioner is in long custody of about 01 year, 11 months and 17 days and he is not involved in any other case under the NDPS Act, though, he is involved in some other cases registered under IPC. Lastly, it is argued that out of 20 PWs, only 03 PWs have been examined, so far.

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, 11 months and 17 days; the petitioner is not involved in any other case; the custodial interrogation of the petitioner is not required; out of 20 PWs, only 03 PWs have been examined and the conclusion of the trial will take some time, 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

05.04.2022
yakub

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