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

CRM-M No.53945 of 2021 (O&M)

Date of decision: 30.03.2022

Arun Kumar

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. J.S. Brar, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN J. (Oral)

CRM-44347-2021

Heard.

Allowed as prayed for.

CRM-M-53945-2021

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.337 dated 29.09.2013, registered under Section 21/61/85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') registered at Police Station Kotwali Faridkot, District Faridkot.

Counsel for the petitioner has submitted that as per the allegations in the FIR, registered at the instance of ASI Gurmail Ram, it is stated that while on petrol duty, a person was seen coming on a foot carrying a polythene bag and on seeing the police party, he became

perplexed and tried to turn back and run away from spot. However, on suspicion, he was apprehended by the police party and thereafter, disclosed his name as Arun. Thereafter, the Investigating Officer gave him a notice, giving an option to be searched before the Magistrate or a Gazetted Officer. In reply to the notice under Section 50 of the NDPS Act, the petitioner reposed faith on the Investigating Officer. Thereafter, the same Investigating Officer conducted the search and recovered 600 gms. of intoxicant powder.

Counsel for the petitioner has further submitted that a perusal of the FIR would reveal that the complainant and the Investigating Officer are the same person, who has apprehended the petitioner and then, gave the notice and when the petitioner reposed confidence in him, without asking for the second Investigating Officer, he himself conducted the search and concluded the entire investigation and only, thereafter, he sent the ruqa to the Police Station for registration of the FIR.

Counsel for the petitioner has also argued that the petitioner was granted the concession of default bail in terms of Section 167(2) Cr.P.C. and later on, he absented from the Court proceedings.

Counsel for the State on the basis of the Custody Certificate has not disputed the factual position but opposed the prayer for bail. Counsel for the State has also submitted that the petitioner was declared a proclaimed offender on 19.04.2016 and he was re-arrested on 24.06.2021 and since then, he is in custody.

In reply, counsel for the petitioner has submitted that on account of misunderstanding that the petitioner stands discharged, he

could not appear before the trial Court and prior to his re-arrest, the petitioner was not involved in any other case and he is in custody for the last 01 year and 09 months and out of 10 PWs, only 04 PWs have been examined.

Without commenting anything on merits of the case, considering the fact that the petitioner is in custody for the last 01 year and 09 months; the petitioner is not involved in any other case; the custodial interrogation of the petitioner is not required; out of 10 PWs, only 04 PWs have been examined and the conclusion of the trial will take some time due to COVID-19 situation, 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/Illaq 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

30.03.2022

yakub

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No