

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

CRM-M No. 397 of 2022 (O&M)

Date of Decision: 12.10.2022

Avtar Singh

-Petitioner

Versus

State of Punjab

-Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Sandeep Verma, Advocate,
for the petitioner.

Mr. Sanjeev Soni, Addl. A.G., Punjab.

RAJ MOHAN SINGH, J. (Oral)

Petitioner seeks grant of regular bail in his second attempt under Section 439 Cr.P.C in case bearing FIR No.50 dated 03.03.2020 registered under Section 22 of NDPS Act at Police Station City Rajpura, District Patiala.

As per allegations, petitioner is accused under Section 22 of NDPS Act. 60,000 tablets of Lomofil were allegedly recovered from him. Though the petitioner was apprehended on the basis of suspicion, but thereafter, the police proceeded to comply with requirement of Section 50 of NDPS Act by giving an offer to the petitioner to opt for his search before the Gazetted Officer or a Magistrate. Petitioner opted for his search before a Gazetted Officer, resulting in

alleged recovery.

CRM-M No.28633 of 2020 was dismissed on 27.07.2021.

Learned counsel for the petitioner submits that the petitioner is not involved in any other NDPS case and till date, he has undergone custody of 02 years, 07 months and 07 days. No prosecution witness has been examined so far. There are total 12 prosecution witnesses.

Learned counsel for the petitioner by referring to order dated 22.08.2022 passed by the Hon'ble Apex Court in **Special Leave to Appeal (Crl.) No.5530 of 2022** titled '**Mohammad Salman Hanif Shaikh vs The State of Gujarat**', order dated 04.08.2022 passed by the Hon'ble Apex Court in **Special Leave to Appeal (Crl.) No.4173 of 2022** titled '**Shariful Islam @ Sarif vs The State of West Bengal**', order dated 09.08.2022 passed in CRM-M No.34236 of 2022 titled '**Buta Singh @ Butta Singh vs State of Haryana**' and order dated 23.08.2022 passed in CRM-M No.33355 of 2021 titled '**Mintu vs State of Haryana**' submits that in case of long custody of the accused, the prayer for regular bail can be accepted, leaving the question in respect of recovery being commercial or otherwise to be considered by the trial Court at the relevant stage in accordance with law.

Learned counsel for the petitioner further submits that in view of recovery memo having not been signed by the petitioner, the recovery would also remain on debatable note.

Learned counsel refers to **Sandeep Kumar vs State of Punjab, 2019(4) RCR (Criminal) 741** to contend that non-appearance of signature of the petitioner on recovery memo would amount to non-compliance of proper procedure.

The factual position of the case is not in dispute.

Learned State counsel with reference to custody certificate admits that the petitioner is not involved in any other NDPS case and he has undergone custody of more than 02 years and 07 months as on date. No prosecution witness has been examined so far.

In view of above, petition is allowed. Petitioner is ordered to be released on bail, subject to his furnishing adequate bail bonds/surety bonds to the satisfaction of the trial Court/concerned Duty Magistrate.

Nothing expressed hereinabove would be construed to be an expression of opinion on merits of the case.

12.10.2022

Jyoti Sharma

(RAJ MOHAN SINGH)
JUDGE

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