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

**\*\*\*\***

**CRM-M-54371-2019  
Date of Decision: 04.02.2022**

**\*\*\*\***

Des Raj @ Vicky

..... Petitioner

Versus

State of Punjab

..... Respondent

**CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI**

Present: Mr. Sahil Puri, Advocate,  
for the petitioner.

Mr. Arun Kumar Kaundal, DAG, Punjab.

**\*\*\*\***

**Through Video Conferencing**

**JASGURPREET SINGH PURI, J. (ORAL)**

The present petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case bearing FIR No.147 dated 28.09.2019 registered under Sections 21 & 22 of Narcotic Drugs and Psychotropic Substances Act,1985 (in short 'the N.D.P.S. Act') at Police Station Satnampura, Phagwara, District Kapurthala.

As per the FIR, which was lodged on 28.09.2019, on the basis of statement made by A.S.I. Jaswinder Singh that when he along with other Police Officials were in a private vehicle in connection with patrol duty and in search of suspicious and anti-social elements in connection of Assembly by-Elections as special duty were present at Bhanoki Road, where from the east side of Village Kheda, one white coloured Innova Car without number came at a high-speed towards the four-way, to which signal was given to the driver of

the vehicle for stopping but the driver under nervousness sped away in which three persons were on board but the A.S.I. along with other fellow employees nabbed the vehicle and asked the names and address of the three persons on board in the vehicle and the driver of the vehicle revealed his name as Des Raj alias Vicky (Petitioner). There was a young man sitting on the conductor seat as well, who revealed his name as Vijay Kumar alias Sandeep Kumar alias Rampuri and there was a young man sitting on the rear seat, who revealed his name as Angrej Singh S/o Tara Singh. From their appearances, it could be seen that the aforesaid young men were having some intoxicant substance or any objectionable item, and therefore, the concerned Police Station was contacted on telephone and the Investigation Officer was sent on the spot. Thereafter, the procedure under the N.D.P.S. Act was adopted and the petitioner and other co-accused were given their legal rights to be searched through a Magistrate or a Gazetted Officer. Thereafter, Sh. Surinder Chand, Deputy Superintendent of Police, Sub Division, Phagwara, being a Gazetted Officer, was called and he was apprised about the circumstances. Thereafter, he complied with all the procedure and there was a recovery of ICE weighing 15 grams from the right pocket of Des Raj alias Vicky (Petitioner) and there was a recovery of 5 grams of ICE from the co-accused Vijay Kumar, which was contained in the polythene bag and there was a recovery of 5 grams of ICE from the other co-accused Angrej Singh. Apart from the above, there was also recovery of Rs.36,000/- of drug money, which was recovered from the dash-board of the vehicle and 50 intoxicated injections were also recovered. The confiscated contraband was sent to the Chemical Laboratory and the FSL Report has also been received by the Police.

Learned counsel for the petitioner has submitted that it is a case where the petitioner was falsely implicated and he is facing incarceration for 2 years 4 months and 7 days and the trial is going at a slow pace, and therefore, considering the total custody of the petitioner, he may be considered for the grant of regular bail. He has further submitted that the speedy trial is a right which is vested with the petitioner, and therefore, on this ground he may be considered for the grant of regular bail. He also submitted that as per the law laid down by the Supreme Court that when a search is to be made an endeavour should be made to take the accused to the nearest Magistrate first which has not been followed in the present case. He further submitted that so far as the present petitioner is concerned the recovery which was effected from his person was only 15 grams of ICE which is of a non-commercial quantity and so far as the recovery of 50 intoxicant injections of *Burpenorphine Hydrochloride* are concerned, the same is from the joint possession of three accused and although it is a commercial quantity, the petitioner can certainly be considered for grant of bail on this ground.

On the other hand, Mr. Arun Kumar Kaundal, DAG, Punjab has vehemently opposed the grant of regular bail to the petitioner. He has submitted that a short reply by way of Affidavit has been filed by Deputy Superintendent of Police, Sub-Division Phagwara on behalf of the State of Punjab and while referring to the reply filed by the State, he has submitted that in the present case due compliance has been made under Section 50 of the N.D.P.S. Act, since the petitioner and the other co-accused gave consent to the Police Officials, who had apprehended them with regard to as to whether they can be searched by him or not, a Gazetted Officer was called, and therefore,

there is no violation of Section 50 of the N.D.P.S. Act. He further submitted that there is no violation of any law laid down by the Supreme Court as in the present case the statutory provision of Section 50 of the N.D.P.S. Act has been meticulously complied with. He has further submitted that the recovery in the present case regarding ICE is concerned the same was although of a non-commercial quantity but the recovery of 50 intoxicant injections containing *Burpenorphine* of 2 ML each and totalling 100 ML falls within the ambit of commercial quantity, and therefore, the bail application filed by the petitioner was hit by the bar contained under Section 37 of the N.D.P.S. Act. He further submitted that the petitioner has not been able to make out any ground for making a departure from Section 37 of the N.D.P.S. Act. While referring to Para 13 of the affidavit filed by the State, he submitted that as per the report of the Chemical Examiner, the 'ICE' contains *Metaphetamine Hydrochloride* and 50 injections contained *Burpenorphine Hydrochloride* 02 mg/ml. and therefore, the confiscated quantity falls under the commercial category. Learned State Counsel further referred to Para 16 of the affidavit in which a list of 7 cases have been mentioned in which the petitioner was earlier also involved. Out of these 7 cases, the petitioner has already been convicted in one of the FIRs under the N.D.P.S. Act in the year 2017 and although in some of the cases, the petitioner is shown to be acquitted but there is another FIR under the N.D.P.S. Act in which the petitioner is still under trial. He further submitted that apart from these 7 cases which have been mentioned in Para 16 of the affidavit, the petitioner is also involved in 4 more cases, out of which, two are pertaining to the Prisons Act, which are pending and two are pertaining to the N.D.P.S. Act, in which, the petitioner is stated to be

acquitted/discharged. The details of all the 11 aforesaid FIRs, as contained in Para No.16 of the affidavit and as stated by learned State counsel are as follows:-

*“i) FIR No.128 dated 16.07.2001 U/S 323, 324, 148, 149 IPC P.S. Phillaur, District Jalandhar.*

*ii) FIR No.121 dated 18.02.2003 U/S 323, 324, 34 IPC P.S. Phillaur, District Jalandhar. (Acquitted 19.03.2005)*

*iii) FIR No.150 dated 28.11.2012 U/S 21 NDPS Act P.S. Kartarpur, District Jalandhar. (Convicted 01.04.2017)*

*iv) FIR No.148 dated 13.07.2014 U/S 21 NDPS Act P.S. Salem Tabri, Ludhiana. (Acquitted 01.12.2017).*

*v) FIR No.84 dated 05.07.2014 U/S 21 NDPS Act P.S. Kotwali, Ludhiana. (Acquitted 06.08.2016)*

*vi) FIR No.301 dated 23.08.2019 U/S 21, 27-A, 29 NDPS Act P.S. Phillaur, District Jalandhar. (Under Trial)*

*vii) FIR No.202 dated 21.07.2014 U/S 22 NDPS Act P.S. Phillaur, District Jalandhar. (Acquitted 21.04.2018)”*

*viii) FIR No.153 dated 19.07.2014 U/S 22/6185 NDPS Act P.S. Salem Tabri.*

*ix) FIR No.95 dated 30.06.2014 U/S 22/61/85 NDPS Act P.S. Salem Tabri.*

*x) FIR No.237 dated 12.09.2021 U/S 52-A Prison Act P.S. Kotwali, District Kapurthala.*

*xi) FIR No.44 dated 03.03.2020 U/S 52-A Prison Act P.S. Kotwali, District Kapurthala.”*

I have heard the learned counsel for the parties.

The petitioner is stated to be in custody for a period of 2 years, 4 months and 7 days and the matter is fixed for framing of charges as per the learned counsel for the parties. The petitioner was allegedly apprehended on

the spot when he was driving the vehicle and there has been a recovery of intoxicant substance which was thereafter found to be *Metaphetamine Hydrochloride* from the pocket of the petitioner and the same salt was also found from the pocket of other co-accused and 50 intoxicant injections of 2 ML each were also found from the vehicle in which they were travelling. Although, as per learned counsel for the parites the salt of ICE does not fall in the commercial quantity but the salt of *Burpenorphine Hydrocholoride* falls within the category of commercial quantity. Section 37 of the NDPS Act lays down a bar for grant of bail when the recovered substance is of a commercial quantity. Learned counsel for the petitioner has not been able to make out any ground for departure from the aforesaid bar contained in Section 37 of the NDPS Act. Even otherwise also considering the antecedents of the petitioner wherein he has been convicted in one of the N.D.P.S. cases, although he was involved in more other cases under the N.D.P.S. Act as well in which he was acquitted.

The Hon'ble Supreme Court in case of “*State of Kerala Etc. Vs. Rajesh Etc.*”, 2020(1) R.C.R. (Criminal) 818 held as follows:-

*“20. The scheme of Section 37 reveals that the exercise of power to grant bail is not only subject to the limitations contained under Section 439 of the CrPC, but is also subject to the limitation placed by Section 37 which commences with non-obstante clause. The operative part of the said section is in the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied. The first condition is that the prosecution must be given an opportunity to oppose the application; and the second, is that the*

*Court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates.”*

In view of the totality of circumstances of the present case, this Court does not deem it fit and proper to grant bail to the petitioner. Consequently, the present petition for grant of regular bail to the petitioner is dismissed.

Learned counsel for the petitioner has raised the issue of speedy trial. In view of the fact that the petitioner is in custody for 2 years, 4 months and 7 days, therefore, keeping in view the custody of the petitioner, the trial Court is directed to expedite the trial.

**04.02.2022**

*Bhumika*

**(JASGURPREET SINGH PURI)  
JUDGE**

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|-------------------------------|-----|
| 1. Whether speaking/reasoned: | Yes |
| 2. Whether reportable:        | Yes |