

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

CRM-M-383-2023

Date of Decision: 09.05.2023

Tanuj Garg

..... Petitioner

Versus

UT Chandigarh

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. S.K. Garg Narwana, Sr. Advocate with
Mr. Vishal Garg Narwana, Advocate and
Mr. Japjit Singh, Advocate, for the petitioner.
Mr. Sumit Jain, Addl. PP, UT, Chandigarh.

Rajesh Bhardwaj, J. (ORAL)

Prayer in the present petition is for the grant of regular bail to the petitioner in a case FIR No.74 dated 03.12.2022, registered under Section 20 of NDPS Act and Section 29 of NDPS Act added lateron, at Police Station Sector 49, Chandigarh.

Adumbrated facts of the case are that the police party while patrolling on 03.12.2022 at about 7:00 a.m., saw a young boy coming towards Road A/B. On seeing the police, the boy stopped in a panicky state and started moving back from there hastily. The boy on being nabbed by the police, tried to take out something from the right hand side pocket of the jacket, however, SI caught hold of his hand and he was found holding a transparent polythene. On asking, he disclosed his name as Tanuj Garg (petitioner). On opening the polythene, they found the same containing charas. On the asking of the police, the boy disclosed that he was carrying charas to sell the same to drug addicts. On asking of the police, he failed to produce any licence/permit to carry the same. The contraband recovered was found weighing 110 grams. As the accused was found possessing

charas weighing 110 grams without permit, FIR was lodged and the investigation commenced. He was arrested on the spot. The petitioner approached the Court of learned Judge, Special Court, Chandigarh for grant of bail, however, the learned Court after hearing both the sides, dismissed the same vide its order dated 23.12.2022. Aggrieved by the same, the petitioner has approached this Court by way of filing the present petition for grant of bail.

It has been contended by learned senior counsel appearing for the petitioner that the petitioner is a student of MBA and he has been falsely and frivolously implicated by the police in this case. He has submitted that alleged recovery effected from the petitioner is from a public place. He has submitted that the recovery is effected from a polythene being carried by the petitioner in his pocket and as per case of the prosecution before he could throw it, the same was recovered from his hand. He has submitted that there is no offer made by the police to be given under Section 50 of the NDPS Act to the petitioner as the recovery is effected from his personal search. He submits that recovery was made from a public place but no independent witness has been joined by the police. He submits that the petitioner has no criminal antecedents and the alleged recovery made from the petitioner is 110 grams of charas, which is marginally above the small quantity, however, it falls under the non-commercial quantity. It is submitted that the mandatory provisions of Section 50 of NDPS Act has not been complied with and thus, false implication of the petitioner is writ large. He submits that charges are framed and the petitioner has been charge-sheeted for conscious possession of 110 grams of charas vide order dated 02.03.2023. He submits that in the facts and circumstances of the case, the petitioner

deserves to be granted bail.

On the other hand, learned State counsel has opposed the submissions made by learned senior counsel for the petitioner and has submitted that the petitioner was arrested on the spot and recovery of 110 grams of charas was effected from him. He submits that on his disclosure statement, co-accused Kharak Bahadur was arrested and from him 5 kgs of charas has been recovered by the Investigating Agency. He further submits that the investigation is complete and the charges are also framed. He fairly submits that the petitioner has been charge-sheeted by the trial Court vide order dated 02.03.2023 for the conscious possession of 110 grams of charas. He submits that as per instructions provided to him, the petitioner is not involved in any other case.

Heard.

Evidently, the petitioner is behind bars since the date of his arrest i.e. 03.12.2022. 110 grams of charas was allegedly recovered from his conscious possession. Though it is contended by the prosecution that on his disclosure statement, 5 kgs of charas has been recovered from co-accused Kharak Bahadur, however, the learned trial Court has framed the charges against the petitioner for the conscious possession of 110 grams of charas. There is no gainsaying that the contraband recovered from the petitioner is marginally above the small quantity, however, the same falls under the category of non-commercial quantity. There is nothing on record to show that the petitioner has any criminal antecedents. Challan is presented and the charges are framed. Veracity of the allegations would be evaluated by the trial Court only after appreciation of complete evidence to be led by both the parties before it. This Court would refrain itself from commenting

anything on the merits of the case, however, considering the prayer for grant of bail to the petitioner, I am of the view that learned counsel for the petitioner has been able to make out a case for grant of regular bail to the petitioner. The trial would take sufficiently long time for its conclusion.

Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail to the satisfaction of the concerned trial Court/Duty Magistrate.

Nothing said herein shall be treated as an expression of opinion on the merits of the case.

09.05.2023			(RAJESH BHARDWAJ)
sharmila	Whether Speaking/Reasoned	:	JUDGE Yes/No
	Whether Reportable	:	Yes/No