

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

CRM-M-4056-2023

Date of Decision: 24.05.2023

Sunil Kumar @ Sheeli

..... Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Ashok Giri, Advocate, for the petitioner.

Mr. Karunesh Kaushal, Assistant Advocate General, Punjab.

Rajesh Bhardwaj, J. (ORAL)

Prayer in the present petition is for the grant of regular bail to the petitioner in a case FIR No.227 dated 17.08.2022, registered under Section 21-b of NDPS Act, and Section 29 of NDPS Act added lateron, at Police Station Phillaur, District Jalandhar.

As per facts of the case, the police party while on patrolling stopped one young person coming on foot. On seeing the police, he got perplexed and turned back. However, on suspicion the police party nabbed him. On asking he disclosed his name as Sunil Kumar @ Sheeli. He was found carrying one plastic bag. The police party suspected him carrying some contraband in the same. On suspicion, he was given offer under Section 50 of NDPS Act for his search and that of the bag. However, he reposed faith in the police party and thus, the search was conducted and 10 grams of heroin and Indian currency of Rs.1,50,000/- were recovered from the petitioner. The petitioner failed to show any licence or permit and any plausible explanation for possession of the same and thus, FIR under Sections 21-B/61/85 NDPS Act was registered. The petitioner was arrested on the spot. He approached the Court of learned Judge, Special Court,

Jalandhar 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 approached this Court by way of filing the present petition for grant of bail.

Learned counsel for the petitioner has vehemently contended that the petitioner has been falsely implicated in this case. He submits that alleged recovery has been effected by the police party in a public place but no independent witness has been joined. He further submits that though offer under Section 50 of the NDPS Act has been given, however, no gazetted officer or Magistrate was joined for search of the person of the petitioner and the bag from which allegedly the contraband and cash of Rs.1,50,000/- were recovered. He submits that as the police party failed to comply with the provisions of Section 50 of the NDPS Act and even failed to join any independent witness, thus the false implication of the petitioner is writ large. He submits that during the investigation, it was alleged that on disclosure statement of the petitioner, two more co-accused were arrested, however, both the said co-accused have been granted bail by this Court. He submits that even otherwise the recovery effected from the petitioner is non-commercial quantity, which is marginally above the small quantity and thus, the petitioner deserves to be granted bail.

On the other hand, learned State counsel has opposed the submissions made by learned counsel for the petitioner and has submitted that though the recovery effected from the petitioner is of non-commercial quantity, however, the drug money of Rs.1,50,000/- has also been recovered from the petitioner. He submits that as per the instructions from ASI Jaswinder Singh, the petitioner is involved in one more case of the similar nature and thus, he does not deserve to be granted bail.

Heard.

As per case of the prosecution, recovery has been effected from the public place, however no independent witness has been joined. The alleged recovery admittedly falls in the non-commercial quantity. Whether the Indian currency of Rs.1,50,000/- recovered from the petitioner is a drug money or not, is debatable issue. However, his co-accused have already been granted bail by this Court. 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.

24.05.2023
sharmila

Whether Speaking/Reasoned
Whether Reportable

(RAJESH BHARDWAJ)
JUDGE

: Yes/No
: Yes/No