

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-9043-2023 (O&M)

Reserved On.: 19.09.2023

Pronounced On: 21.09.2023

Satta Singh @ Satta

.....Petitioner

Vs.

State of Punjab

.....Respondent

CORAM: - HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: - Mr. Barjinder Singh, Advocate with
Mr. Prateek Pandit, Advocate for
the petitioner.

Mr. M.S. Nagra, AAG, Punjab.

DEEPAK GUPTA, J. (ORAL)

The petitioner prays for grant of regular bail by way of this petition filed under Section 439 Cr.P.C in case FIR No.118 dated 10.06.2022 registered under Section 22 of NDPS Act, 1985 registered at Police Station Sultanpur Lodhi, District Kapurthala.

2. As per prosecution allegations, 210 gram of intoxicant powder containing salt of Alprazolam, was found from the possession of petitioner on 10.06.2022 regarding which he could not produce any license.

3. It is contended by learned counsel that petitioner has been falsely implicated and in fact no recovery was effected from him. Learned counsel contends that petitioner was made to pick up the polythene bag, as per own version of the prosecution and then open and produce it before the Arresting Officer, indicating that recovery was on personal search and so, compliance of

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Section 50 of the NDPS Act was mandatory and as said compliance has not been made, so prosecution case is not reliable. Learned counsel has referred to ***Rajandeep Singh @ Ghughi v. State of Punjab decided on 28.01.2021 by a co-ordinate Bench of this Court in CRM-M-36504-2020 (O&M)***. Learned counsel further contends that petitioner is in custody for the last more than 01 year and 03 months and despite framing of the charge on 02.12.2022, not even a single witness has been examined so far and thus, trial is likely to take long time to conclude. With these submissions prayer is made for grant of regular bail.

4. Opposing the prayer for grant of bail, learned State counsel contends that recovered quantity of contraband from the petitioner fall within commercial category. It is further contended that petitioner had thrown the waxed envelope on the roadside and told to the police party that it contained his household goods but on asking him again, petitioner disclosed that it contained narcotic substance and got recovered the thrown waxed envelope at his own. Learned State counsel submits that in these circumstances, compliance of Section 50 of the NDPS Act was not required, as it is a case of chance recovery. However, it is conceded by learned State counsel that though challan was submitted on 20.10.2022 and charge was framed on 02.12.2022, but not even a single witness has been examined so far. Learned State counsel also submits that petitioner is involved in two more cases pertaining to NDPS Act and one case under Excise Act and prays for rejecting the bail.

5. Refuting the aforesaid submissions of the State counsel, learned counsel for the petitioner submits that petitioner is on bail in all other cases.

He reiterates that compliance of Section 50 of the NDPS Act was required.

6. Status report filed by the respondent reveals that police party was on patrolling, when a young man was seen coming on feet and who got perplexed at the sight of the police party and threw the waxed envelope in the bushes from his right pocket. Police party apprehended him and inquired about contents of the thrown envelope, to which he initially answered that it contained household goods but upon asking again, he got recovered the thrown waxed envelope with his hand, which was found to contain the contraband. In somewhat similar circumstances, it was observed by a coordinate Bench of this Court in ***Rajandeep Singh's case (supra)*** that when admittedly the recovery was effected after the petitioner had presented the alleged contraband with his own hand to the concerned police officer, it would be absurd to raise the contention that recovery was made from the ground and not from the hands/person of the petitioner; and so, there was requirement to make compliance of Section 50 of the NDPS Act.

6. Be that it may, depending upon the evidence to be produced during trial, it will be debatable as to whether in the facts and circumstances of this case, compliance of Section 50 of NDPS Act was required or not. However, it is conceded position that despite filing of the challan in November, 2022 and framing of the charge in December, 2022, not even a single witness has been examined so far out of the 10 witnesses cited by the prosecution. Though petitioner is involved in two other cases pertaining to NDPS Act but he is on bail on those cases. Petitioner is in custody for the last 01 year 03 months and 09 days, in present case as per the custody certificate.

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7. Having regard to all the aforesaid facts and circumstances, but without commenting anything further on the merits of the case, this petition is allowed. Petitioner is admitted to bail on his furnishing bail bonds/surety bonds to the satisfaction of the Learned Trial Court/Duty Magistrate concerned.
8. The Court concerned will be at liberty to impose the appropriate conditions to secure the attendance of petitioner during trial.

September 21, 2023
Neetika Tuteja

(DEEPAK GUPTA)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No