

**213 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CRM-M-9834-2023****Date of decision : 30.05.2023****Jarnail Singh @ Jaila****.....Petitioner****versus****State of Punjab****..... Respondent****CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ*********

Present :- Mr. Kanwaljeet Singh, Advocate and
Mr. Satvir Singh, Advocate
for the petitioner.

Mr. Karunesh Kaushal, AAG, Punjab.

*********RAJESH BHARDWAJ, J. (Oral)**

Petitioner has approached this Court by way of present petition praying for grant of regular bail to him in case FIR No.01 dated 01.01.2021, under Sections 21 and 22 of the NDPS Act, registered at Police Station City Barnala, District Barnala.

Succinctly, facts of the case are that the police party while on patrolling received a secret information that Jarnail Singh @ Jaila (petitioner) was indulging in bringing the intoxicating tablets and intoxicating vials from outside and sell the same in city of Barnala and presently he was in possession of the intoxicating tablets and vials. It was informed that if raid is conducted, he can be apprehended. Finding the secret information reliable, ruqa was sent and case was registered. Pursuant to the same, raiding party was constituted and on conducting the raid accused was nabbed. On asking, he disclosed his name as Jarnail Singh @ Jaila. He was given an offer under Section 50 of NDPS Act for his search and that of the bag being carried by him. However, the search

was conducted by the ASI. On searching the bag, 18 intoxicating vials make Wincierex effected from the bag being carried by the accused. The samples were taken and sent to the FSL. On receipt of the FSL report, sample was found to be containing Codeine Phosphate total weighing 1800 ml. Petitioner failed to produce any license for the possession of the intoxicant being carried and thus, was arrested on spot. He approached the learned Judge, Special Court, Barnala, however, after hearing counsel for both the sides, learned Judge declined the same vide his order dated 22.11.2022. Aggrieved by the same, petitioner is before this Court praying for grant of bail.

It has been contended by counsel for the petitioner that the petitioner has been falsely implicated in this case. He submits that recovery in this case has been effected on the basis of the secret information. However, there is no compliance of Section 42 of the NDPS Act, which is mandatory in nature. He further submits that though the offer under Section 50 of the NDPS Act was given, however, the recovery has been effected by the ASI only and not by any Gazetted Officer or a Magistrate which further vitiates the recovery effected. He further submits that no independent witness had been joined at the time of recovery and thus, the false implication of the petitioner is writ large. He submits that petitioner has no criminal antecedents and he is not even habitual offender. He has submitted that the petitioner is behind bars from last more than 02 years and about 06 months and no witness has been produced by the prosecution for examination and thus, the right of speedy trial of the petitioner is blatantly being defeated. He submits that in the facts and circumstances of the case, petitioner deserves to be granted

regular bail.

Per contra, learned State counsel has opposed the submissions made by counsel for the petitioner. He, on instructions from SI Manjinder Singh, submits that there is due compliance of Sections 42 and 50 of the NDPS Act. He further submits that the recovery effected from the petitioner on the basis of the secret information falls in the category of commercial quantity. As the same weighing 1800 ml of Codeine Phosphate. He submits that out of 09 prosecution witnesses, 02 witnesses have been examined so far. He further submits that as per the instructions provided, petitioner is not involved in any other case of the similar nature.

I have heard counsel for the parties and perused the record.

Evidently, petitioner is behind bars since the date of his arrest. Recovery in the case was effected on the basis of secret information and the search was conducted by the ASI himself. There is nothing on record to show that any independent witness had been joined at the time of recovery of the contraband effected from the petitioner. There is nothing on record to show that the petitioner is involved in any other case of the similar nature.

The trial of the case will take sufficiently long time. The veracity of the allegations would be assessed only after the conclusion of the trial and on the appreciation of evidence to be led by both the parties before the trial Court. This Court would refrain itself from commenting anything on the merits of the case. However, keeping in view the custody as well as the attending facts and circumstances of the case, this Court is of the opinion that learned counsel for the petitioner succeeds in making

out a case for grant of regular bail. Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail/surety bonds 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.

30.05.2023
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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