

**206 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CRM-M-12497-2022****Date of decision : 30.05.2023****Manjit Singh @ Baba****.....Petitioner****versus****State of Punjab****..... Respondent****CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ***********Present :- Mr. Rishu Mahajan, 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.97 dated 16.08.2021, under Section 21(C) of the NDPS Act, registered at Police Station Bhikiwind, District Tarn Taran.

Adumbrated facts of the case are that the police party while on patrolling spotted a young person coming on foot. He was stopped on the suspicion of carrying some contraband. On asking, he disclosed his name to be Manjit Singh @ Baba. He was given an offer under Section 50 of the NDPS Act to be searched before the Gazetted Officer or the Magistrate. On this, the petitioner opted to be searched before the Gazetted Officer and thus, his search was conducted by the DSP who was called on the spot. On search of the pocket of the accused-petitioner, 450 grams of heroin was recovered. The accused failed to show any license for the possession of the same and thus, the FIR was registered and the petitioner was arrested on the spot. On registration of the FIR,

investigation commenced. The samples were taken and sent to the FSL. Petitioner approached the Court of learned Additional Sessions Judge, Tarn Taran praying for grant of bail. However, after hearing counsel for both the sides, learned Additional Sessions Judge, Tarn Taran declined the same vide his order dated 25.02.2022. Aggrieved by the same, petitioner is before this Court praying for grant of regular bail.

Learned counsel for the petitioner has vehemently contended that the petitioner has been falsely roped in the present case. He submits that the alleged contraband has been recovered from the pocket of the petitioner. He further submits that as per the consent memo, petitioner was given an offer under Section 50 of the NDPS Act by the investigating agency to be searched in front of a Gazetted Officer from the State of Punjab or a Magistrate. He submits that as per the mandate of Section 50 of the NDPS Act, the offer could be given for the search only in front of a Gazetted Officer or a Magistrate but by mentioning the Gazetted Officer from the State of Punjab has vitiated the offer given under Section 50 of the NDPS Act. He further submits that though the recovery has been made from a public place, however, the investigating agency has not joined any independent witness in this case at the time of recovery. He has submitted that the petitioner has no criminal antecedents and thus, the false implication of the petitioner is writ large. He has submitted that the petitioner is behind bars since the date of his arrest and thus, he has completed incarceration of about 01 year and 09 months. He submits that the prosecution has not even examined half of the witnesses cited in the challan and thus, the right of speedy trial as enshrined under Article 21 of the Constitution of India is being defeated. He submits that in the facts

and circumstances of the case, petitioner deserves to be granted bail.

Per contra, learned State counsel, on instructions from ASI Sukhwinder Singh, has opposed the submissions made by counsel for the petitioner. He has submitted that there is no violation of Section 50 of the NDPS Act in whatsoever manner in the present case. He has further submitted that the offer was given by the investigating agency to be searched in front of the Gazetted Officer from the Government of Punjab or Magistrate and the same would not vitiate the provisions of Section 50 of the NDPS Act. He further submits that the recovery has been effected from the pocket of the petitioner from whom 450 grams of heroin which is a commercial quantity was recovered. He further submits that out of 10 prosecution witnesses, only 01 witness has been examined so far.

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

Evidently, the petitioner is behind bars since the date of his arrest i.e. 16.08.2021. The recovery has been effected from the pocket of the petitioner falling under the commercial quantity. There is nothing on record to show that the petitioner has any criminal antecedents as he has never been prosecuted in any other case of the similar nature. Out of 10 prosecution witnesses cited, only 01 witness has been examined till date. Needless to say that the speedy trial is the right of every accused.

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 period 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