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

**CRM-M-16641-2023
DECIDED ON: 17.04.2023**

SUKHWINDER SINGH

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Mandeep Kumar Dhot, Advocate for
the petitioner.

Mr. Mohit Chaudhary, AAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

The petitioner seeks regular bail in case FIR No.267 dated 29.12.2021 under Section 22 of Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station Bhawanigarh, District Sangrur.

Learned counsel for the petitioner contends that the alleged contraband has not been recovered from his conscious possession as the contraband tablets were found scattered on the ground. He further submits that there is non-compliance of Section 50 of the NDPS Act as no offer was given by the Investigating Officer for being searched in the presence of a Gazetted Officer and that ASI Prem Singh had not called the second IO from PS Bhagwanigarh, rather he called the same from CIA Staff, BS Wala, which is at the distance of 45 kms from the place of recovery.

Notice of motion.

On the asking of the Court, Mr. Mohit Chaudhary, AAG Punjab accepts notice and has filed custody certificate dated 14.04.2023, which is taken on record. According to which, the petitioner has undergone 1 year 3 months and 11 days of actual custody. He asserts that the contraband recovered from the petitioner is commercial in nature and as such he does not deserve the concession of regular bail.

Considering the submissions made by learned counsel for the petitioner and the custody period i.e. 1 year 3 months and 11 days , apart from the fact that instead of any police official/IO from the police station, which was allegedly just 5 kms, from the alleged place of recovery, chose to call CIA staff from a distance of 45 kms and the contraband has not been recovered from the conscious possession of the petitioner, as there is contradiction with regard to the manner of recovery whether it was from the ground after it fell down or from the motor cycle in a bag kept in between driver and pillion rider, which is contradictory to each other, the chances of false implication cannot be ruled out. This Court also cannot lose sight of the fact that during further investigation as well as from the version of the FIR, was alleged to be carrying a bag which was transparent and white in colour and as such it is beyond any stretch of imagination that the person accused would be carrying such a contraband in a transparent carry bag. All these circumstances create doubt in the story of the prosecution.

In view of the above and also taking into consideration the fact that the trial is likely to take some time, therefore, no fruitful purpose will be served by keeping the petitioner behind bars, the petitioner is directed to be released on

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regular bail on furnishing bail and surety bonds to the satisfaction of the Chief
Judicial Magistrate/Duty Magistrate concerned.

The present petition is, therefore, allowed.

(SANDEEP MOUDGIL)
JUDGE

17.04.2023

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