

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

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CRM-M-32960-2022 (O&M).**Date of Decision: 13.07.2023.****ANIL @ LILA****...Petitioner****Versus****STATE OF HARYANA****...Respondent****CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ**

Present: Mr. Rohit Sud, Advocate,
Mr. S.S. Gill, Advocate, and
Ms. Kuljeet Kaur, Advocate, for the petitioner.

Mr. Vivek Chauhan, Addl. A.G. Haryana.

VINOD S. BHARDWAJ. J (ORAL)

The present second petition has been filed under Section 439 of the Code of Criminal Procedure, for the grant of regular bail in FIR bearing No.490 dated 25.07.2021, registered under Sections 20 (b) (ii) (c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the NDPS Act') at Police Station Rohtak City, District Rohtak.

The case of the prosecution in brief is that on 25.07.2021, Sub Inspector Virender Singh received a secret information that the petitioner-accused has concealed contraband in Hyundai Creta Car

bearing Registration No.HR-12-AE-1375 and is coming from the side of Gohana to Sukhpura Chowk, Rohtak. On receipt of the secret information, a report under Section 42 of the NDPS Act was sent to the Police Station for registration of the FIR. The police party reached at the spot and a *nakabandi* was done. The car driven by the petitioner was stopped whereupon recovery of 2.058 Kgs. of *Charas* was effected from the above said car in the presence of Gazetted Officer DSO Gorakh Pal.

Learned counsel for the petitioner contends that the petitioner has been falsely implicated in the aforesaid case and the recovery has been planted on him. He contends that the petitioner had already moved an application under Section 91 of the Cr.P.C. for obtaining the tower location of the Investigating Officer as well as the DSP to verify the version as narrated by them in the investigation. It is further contended that mandatory provisions of Section 50 of the NDPS Act have not been complied with and that the car in question was picked from the house of the petitioner and the number plate has been fitted to implicate the petitioner. The said number plate being a fake and belonging to a two wheeler was affixed on the car only for the purpose of involving the petitioner herein. He further refers to certain documents to contend that the DSP Gorakh Pal was vindictive towards the petitioner and that he had committed atrocities against the family of the petitioner and even a complaint against the said officer had also been given by the *Bhabhi* of the petitioner. It is further contended that the petitioner is in custody since 25.07.2021 and has already undergone actual custody of about 01 year and 11 months and only 02 witnesses out of total 16

witnesses cited by the prosecution have been examined so far and conclusion of the trial is likely to take long time.

On the other hand, learned State counsel contends that the petitioner is a habitual criminal is involved in various other cases including one case bearing FIR No.105 dated 17.02.2019 under Section 21 of the NDPS Act, registered at Police Station City, Rohtak wherein recovery of 60 grams of heroin had been effected. It is, however, not disputed by the learned State counsel that only 02 witnesses have been examined so far out of total 16 witnesses cited by the prosecution. He submits that the necessary statutory compliance had been made and that the submissions advanced by the petitioner are disputed questions of fact that are to be examined by the trial Court.

Controverting the aforesaid submissions, learned counsel for the petitioner contends that in the above said case bearing FIR No.105 dated 17.02.2019 under Section 21 of the NDPS Act, registered at Police Station City, Rohtak, no recovery was effected from the petitioner and that the recovery in its entirety was effected from the co-accused. He further relies on the judgment of this Court in the matter of **Buta Singh Vs. State of Punjab, CRM-M-3209 of 2022, decided on 25.04.2022** as well as on the judgment in the matter of **Sarabjit Kaur Vs. State of Punjab, CRM-M-26248-2021 decided on 30.03.2022**, to contend that when there is a violation of the statutory mandate, the accused is entitled to be released on bail.

I have heard the learned counsel appearing on behalf of the respective parties and have gone through the case file with their able

assistance and have also gone through the judgments relied upon by the petitioner.

Without commenting upon the merits of the disputed questions of fact and taking into consideration the period of actual custody of 01 year and 11 months undergone by the petitioner; stage of the trial; absence of any recovery from the petitioner in the earlier case registered against him as well as the surrounding circumstances, I deem it fit to allow the instant application.

Accordingly, the instant petition is allowed and the petitioner is ordered to be admitted to regular bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned.

It is made clear that the petitioner shall not extend any threat and shall not influence any prosecution witness in any manner directly or indirectly.

The observation made hereinabove shall not be construed as an expression on the merits of the case and the trial Court shall decide the case on the basis of available material.

July 13, 2023
raj arora

(VINOD S. BHARDWAJ)
JUDGE

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