

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

CRM-M-31297-2023

Date of decision : 10.07.2023

RAJBIR SINGH

....Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Rajesh Lamba, Advocate for the petitioner.

Mr. Gaurav Bansal, DAG, Haryana.

PANKAJ JAIN, J. (ORAL)

This petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case F.I.R. No.432 dated 22.11.2015 registered for the offence punishable under Sections 21/27-A of Narcotic Drugs and Psychotropic Substance Act, 1985 (for short, 'the NDPS Act') at Police Station Sadar Tohana, District Fatehabad.

2. As per the allegations levelled in the FIR, the petitioner was found to be in possession of 6 gram of smack and is thus being tried for offence punishable under Section 21 of the NDPS Act. The petitioner was earlier admitted to bail vide order dated 11.12.2015 and thereafter appeared before the Trial Court. However the petitioner absented himself from the trial and was arrested on 29.09.2016. He again admitted to bail on 21.10.2016. However, the petitioner again absented himself from the trial in the year 2019. His application for admission to bail was rejected by the Trial Court on 16.07.2019. The petitioner is stated to be in custody *qua* the

present matter from 02.06.2022 to 08.07.2023. Counsel for the petitioner has raised submissions on merits. He submits that since the recovery has been effected from the personal search of the petitioner and notice issued to him gave triple option and it was the IO only who searched and effected the recovery the same will be vitiated and solely cannot form basis to convict the petitioner in view of law laid down by the Apex Court in the case of '**State of Punjab vs. Baldev Singh**', (1999) 6 SCC 172 reiterated by the Apex Court in the case of '**State of Rajasthan vs. Parmanand and another**', (2014) 5 SCC 345.

3. State counsel is not in a position to dispute the aforementioned factual assertions made by the Counsel for the petitioner based on record.

4. Though the conduct of the petitioner having misused the concession of bail twice does not merit any relief. However, keeping in view the peculiar facts and circumstances of the case and the fact that the petitioner has suffered incarceration of more than 1 year, 2 months and 18 days and no other case is pending against him as on date under the NDPS Act, the present petition is allowed. The petitioner is ordered to be released on bail on his furnishing bail bonds/surety bonds to the satisfaction of the Trial Court/Duty Magistrate concerned.

5. However in order to ensure that the petitioner does not repeat the misadventure of abusing the concession of bail, he shall be bound by the following conditions in addition to the conditions that may be imposed by the Trial Court :

- (i) The petitioner shall not mis-use the liberty granted.
 - (ii) The petitioner shall not tamper with any evidence oral or documentary during the trial.
 - (iii) The petitioner shall not absent himself on any date before the trial.
 - (iv) The petitioner shall not commit any offence similar to the one alleged in the present case.
 - (v) The petitioner shall deposit his passport, if any with the trial Court.
 - (vi) The petitioner shall give his cellphone number to the police authorities and shall not change his cell-phone number without permission of the trial Court.
 - (vii) The petitioner shall not in any manner try to delay the trial.
6. In case of breach of any of the aforesaid conditions and those which may be imposed by the Trial Court, the prosecution shall be at liberty to move cancellation of bail of the petitioner.
7. Needless to say that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

July 10, 2023		(Pankaj Jain)
Dpr		Judge
Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No