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

CRM-M-37249-2022 (O&M)

Date of decision : 15.05.2023

Gagandeep Singh alias Gagan

.....Petitioner

versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Mikhail Kad, Advocate
for the petitioner.

Mr. Sandeep Kumar, D.A.G. Punjab.

RAJESH BHARDWAJ, J. (Oral)

Prayer in the present petition is for grant of regular bail to the petitioner in case FIR No.263 dated 16.10.2021, under Sections 22, 29 of the NDPS Act, 1985 at Police Station Sadar Nabha, District Patiala.

2. As per facts of the case, on 16.10.2021, the police party while on patrol, received a secret information that Gagandeep Singh alias Gagan was in the business of selling intoxicating medicines secretly. It was informed that he was waiting for some person for giving intoxicating medicines to him on a black coloured motorcycle Hero Honda Splendor and if a raid was conducted, he could be arrested with the contraband. On receipt of this secret information, ruqa was sent to the higher officials and FIR was registered and a *Naka* was laid. As per the secret information

received, accused was seen coming on the motorcycle having a black coloured plastic bag on the handle of the motorcycle. On suspicion, he was stopped and on asking his name, he disclosed his name to be Gagandeep Singh @ Gagan and he was informed that there was suspicion that in the bag carrying on his motorcycle, there may be narcotic contraband, which was required to be searched. He was given an offer under Section 50 NDPS Act for the search but he reposed faith in the Investigating Officer and thus, the search was made by the Investigating Officer of the bag and 15 bottles of RUKSCOF weighing 100 ml each were recovered from the bag, having salt 'Codeine Phosphate'. Thus, a total quantity comes to 1.5 Kg./Liters of contraband was recovered from the accused. The sample was taken and sent to the FSL and on receipt of the same it was ascertained that the contraband contained 'Codeine Phosphate'. Thus, the report under Section 173 Cr.P.C. was filed. The petitioner was arrested on the spot and he approached the learned Judge, Special Court, Patiala praying for grant of bail. However, learned Judge, Special Court after hearing counsel for the parties, declined the same vide order dated 09.12.2021. Aggrieved by the same, the petitioner has approached this Court by way of filing the present petition.

3. Learned counsel for the petitioner has vehemently contended that petitioner has been falsely implicated in this case. The case of the prosecution is based on secret information and thus, the compliance of Section 42 of NDPS Act was mandatory but the same has not been complied with in this case. He further submits that as per the notice given by the Investigating Officer under Section 50 NDPS Act, it is apparent that petitioner was given offer for his personal search and the bag.

However, despite that the search was not conducted in the presence of the Gazetted Officer, simply on the ground that the petitioner refused for the same. He submits that as per the law settled, once the offer has been given under Section 50 NDPS Act for the personal search, it is mandatory for the Investigating Officer concerned to call the Gazetted Officer and conduct the search in his presence, which has not been done in the present case and thus, there is a clear violation of Section 50 NDPS Act. He submits that the petitioner is behind bars in the present case since the date of his arrest i.e. 16.10.2021 and he has never been involved in any other case. Thus, the false implication of the petitioner is evident and the petitioner deserves to be granted bail.

4. Learned State counsel, on the other hand, has opposed the submissions made by counsel for the petitioner. He submits that on receipt of a secret information, *ruqa* was sent to the higher officials and thereafter the FIR was registered. He submits that on registration of the FIR, a Naka was laid and the petitioner was stopped. On the search carried out, the recovery of aforesaid quantity i.e. of 15 bottles of 'RUKSCOF' were effected from the petitioner. He submits that the FSL report received confirmed that the contraband was containing 'Codeine Phosphate', which falls under the category of commercial quantity. He further submits that as the recovery has been effected from the bag, provisions of Section 50 NDPS Act has not even attracted in this case. Out of total 15 prosecution witness, 2 have been examined so far and 7 have been given up. He submits that as per the information provided, petitioner is not involved in any other case of similar nature.

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

6. Evidently, petitioner is behind bars since 16.10.2021. FIR was registered on the basis of secret information. The offer was given by the Investigating Officer for his personal search and that of the bag under Section 50 NDPS Act, however, the search was conducted by the Investigating Officer himself not in the presence of any Gazetted Officer. There is nothing on the record to show that the petitioner is having any criminal antecedents. As per the information submitted to this Court, 2 out of 15 prosecution witnesses have been examined so far. The contraband recovered was found to be containing 'Codeine Phosphate' and as per the Schedule of NDPS Act, more than 1 Kg is commercial quantity and the recovery effected from the petitioner is of 1.5 Kg/Liters.

7. As held by the Hon'ble Supreme Court in **Mohd Muslim @ Hussain Vs. State (NCT of Delhi) 2023 LiveLaw(SC) 260**, this Court is of the opinion that the case of the petitioner is covered by the ratio laid down by the Hon'ble Supreme Court. In the abovesaid case Hon'ble Supreme Court expressed its views as under:-

“19. A plain and literal interpretation of the conditions under Section 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.

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21it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable.

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23. There is a further danger of the prisoner turning to crime, "as crime not only turns admirable, but the more professional the crime, more honour is paid to the criminal"²² (also see Donald Clemmer's 'The Prison Community' published in 1940²³). Incarceration has further deleterious effects - where the accused belongs to the weakest economic strata: immediate loss of livelihood, and in several cases, scattering of families as well as loss of family bonds and alienation from society. The courts therefore, have to be sensitive to these aspects (because in the event of an acquittal, the loss to the accused is irreparable), and ensure that trials – especially in cases, where special laws enact stringent provisions, are taken up and concluded speedily.'

7. Keeping in view the above, this Court would refrain itself from commenting anything on the merits of the case. The trial of the case will take sufficiently long time. However, keeping in view the long custody of the petitioner, this Court finds that the petitioner deserves to be granted 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.

(RAJESH BHARDWAJ)
JUDGE

15.05.2023

Sachin M.

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