

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

296

CRM-M-37879-2022
Date of Decision: 19.01.2023

SUNIL KUMAR @ SUNNY

... Petitioner

Versus

STATE OF PUNJAB

... Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Raj Kumar, Advocate
for Mr. Gagandeep Singh, Advocate
for the petitioner.

Ms. Niharika, AG, Punjab.

VINOD S. BHARDWAJ, J. (ORAL)

Instant petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the petitioner in case bearing FIR No.62 dated 20.05.2020 under Sections 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station STF, SAS Nagar, Mohali.

The brief facts of the case are:-

A perusal of the FIR shows that a secret information was received by ASI Kashmir Singh on 20.05.2020 that one Deputy Singh son of Bagicha Singh and Avtar Singh son of Balwinder Singh are doing the business of selling of heroin and contraband called ice and that they deliver the same in Amritsar. It is noted that the co-accused Avtar Singh had allegedly acquired the contraband from Deputy Singh on 19.05.2020 and had to come to Amrtisar to deliver the same in the area of Maqbulpura and

that in this case a Nakabandi is to be done then he can be apprehended. Finding the information to be reliable, noticing that being in the local rank of ASI he did not conduct investigation under the NDPS Act, he shared the same with SI Davinder Singh. Upon receipt of the said information, the Sub Inspector reduced the same in writing as a part of the police proceeding and sent the same to the Police Station for registration of the FIR, thereafter, a Nakabandi was carried out near the closed shops of Improvement Trust in Guru Teg Bahadur Nagar in the area of Maqbulpura at around 2:10 P.M. It is contended that after some time a person as prescribed in the secret information was seen coming from the vallah Mandi fatak and was apprehended with the help of officials where he disclosed his name as Avtar Singh. The search was thereafter conducted in compliance of Section 50 of the NDPS Act before the DSP. The recovered contraband was weighed and a separate plastic box parcel was prepared which was sealed by SI Davinder Kumar by his seal 'DK' and by the seal of the DSP 'VK'. The intoxicant parcel containing the substance (Ice) was also weighed and sealed in a similar manner.

Learned counsel for the petitioner contends that the petitioner was not named in the FIR and that he has been implicated in the present case on the basis of disclosure statement made by the co-accused during the course of investigation.

It is further submitted that pursuant to the said disclosure, a search was purportedly conducted and recovery of contraband was effected from underneath the mattress of the bed. No recovery had been made from the conscious possession of the petitioner and there is nothing to demonstrate that the petitioner was the sole and exclusive occupant of the

said room. He further submits that co-accused Jatin Sharma has already been granted the concession of regular bail by this Court vide order dated 27.07.2022 passed in CRM-M-24095-2022. It is also averred that there are as many as 15 witnesses and that even though the petitioner has already undergone an actual custody nearly 2 and half years, however, no prosecution witness has been examined so far. He further submits that there is no other criminal case registered against the petitioner.

Learned State counsel contends that the commercial quantity of contraband was recovered at the instance of the petitioner from underneath the mattress in the room which was under occupation of the petitioner. She further submits that the recovery having been effected at the instance of the petitioner, he does not deserve concession of bail. However, the State counsel is not able to controvert the fact that the petitioner has already undergone an actual custody of more than 2 and half years and no prosecution witness has been examined till date. She has also not been able to controvert the fact similarly placed co-accused has already been granted the concession of regular bail vide order dated 27.07.2022 passed in CRM-M-24095-2022.

Taking into consideration the submissions advanced by the counsel appearing on behalf of the respective parties, the period of custody already undergone, the stage of trial as well as the fact that similarly placed co-accused has already been granted the concession of regular bail, I deem it appropriate to allow the instant petition.

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

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

The observations 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.

Petition stands allowed accordingly.

19.01.2023
pry

(VINOD S. BHARDWAJ)
JUDGE

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