

2023:PHHC:101475

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****CRM-M No.46326 of 2022 (O&M)**
Date of decision: 07.08.2023

Mukesh Kumar

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN**Present:** Mr. Lalit Singla, Advocate for the petitioner.

Mr. Teevar Sharma, AAG, Punjab.

ARVIND SINGH SANGWAN J. (Oral)

Prayer in this 2nd petition is for grant of regular bail to the petitioner under Section 439 of the Code of Criminal Procedure (in short 'Cr.P.C.') in FIR No.203 dated 12.09.2021, registered under Section 22-C of the NDPS Act, registered at Police Station Sirhind, District Fatehgarh Sahib.

The earlier one was dismissed as withdrawn on 21.02.2022.

Counsel for the petitioner has submitted that as per the allegations in the FIR, registered at the instance of ASI Satwinder Singh, on 12.09.2021, an information was received by the police petrolling party from a secret informer that the petitioner Mukesh Kumar, who is resident of Rajpura, is habitual of selling narcotic substance and is coming on a motorcycle, carrying narcotic powder. On receiving the information, the FIR was registered and thereafter, ASI Amarjit Singh along with his fellow employees laid a barrier and apprehended the petitioner, who was coming on a scooter. The petitioner was given an option to be searched before a Gazetted Officer or a Magistrate and thereafter, the Deputy Superintendent of Police, Circle

Fatehgarh Sahib, was called and on search, intoxicant tablets and powder containing TRAMADOL HYDROCHLORIDE was recovered. It is also submitted that the petitioner is in custody for the last 01 year and 10 months and out of 13 PWs, only 02 PWs have been examined.

Counsel for the petitioner has argued that since the FIR was registered on the basis of the secret information, therefore, it will be a matter of trial whether the mandatory provisions of Section 42 of the NDPS Act have been complied with or not.

On 14.07.2023, counsel for the petitioner had argued that the Incharge of CIA Staff namely Inspector Gabbar Singh, who was also part of the investigating team was not present at the spot, from where the petitioner is shown to be arrested.

Counsel for the petitioner has further contended that he has set up a defence that he was picked up from his house i.e. Punjab Enclave Colony, Bhogla Road, Phase-II, Rajpura at around 6:30 AM on 10.09.2021, by the police officials of CIA Staff, Sirhind, headed by the aforesaid Inspector Gabbar Singh and therefore, the Senior Superintendent of Police, Fatehgarh Sahib, was directed to verify this fact and submit an affidavit.

As per the affidavit of the Senior Superintendent of Police, Fatehgarh Sahib, upon verification, the location of the mobile phone of Inspector Gabbar Singh, on 10.09.2021 from 06:30 AM was in the area of Rajpura, Derabassi and Mohali, which are adjoining the District Fatehgarh Sahib.

Though, an explanation is given that due to petrol duty, the mobile phone location keep on changing, however, from the affidavit of the Senior Superintendent of Police, Fatehgarh Sahib, the defence set up by the petitioner need to be decided during the course of trial, after leading the evidence.

Counsel for the State on the basis of the Custody Certificate has not disputed the factual position that the petitioner is in custody for the last 01 year and 10 months, but opposed the prayer for bail on the ground that he is involved in one more case registered in the year 2021.

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Without commenting anything on merits of the case, considering the fact that the petitioner is in long custody for the last 01 year and 10 months; the stage of trial i.e. only 02 PWs have been examined; the defence set up by the petitioner that Inspector Gabbar Singh, who was part of the investigating team was, in fact, not there, for which the petitioner can lead the defence evidence and also in view of the fact that it will be a matter of trial, whether Section 42 of the NDPS Act was properly complied with or not, this petition is allowed and the petitioner is directed to be released on bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaqa Magistrate/Duty Magistrate.

However, it will be open for the prosecution to apply for cancellation of bail of the petitioner, in case he is found involved in any other case or misusing the concession of bail, in any manner.

(ARVIND SINGH SANGWAN)
JUDGE

07.08.2023

yakub

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No