

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

CRM-M-45729-2023

Date of Decision: 04.12.2023

Vinay Shah

..... Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Gagan Oberoi, Advocate, for the petitioner.

Ms. Upasana Dhawan, Assistant Advocate General, Haryana.

Rajesh Bhardwaj, J. (ORAL)

Prayer in the present second petition is for the grant of regular bail to the petitioner in a case FIR No.209 dated 01.09.2022, registered under Sections 20 (B)(II)(C) of NDPS Act, at Police Station Manesar, Gurugram.

Adumbrated facts of the case are that on 01.09.2022, a secret information was received that Vinay Shay resident of Bihar was indulged in selling Ganja and if Naka was laid, he could be apprehended alongwith the contraband. On finding the information reliable, the Police laid the Naka and after about 20 minutes, one person was seen with a bag/katta. The secret informer pointed out that the person coming was Vinay Shah. Thereafter, Vinay Shah (petitioner) was apprehended by the Police and after giving notice under Section 50 of the NDPS Act, search was conducted. On the search, the bag being carried by accused Vinay Shah was found to be containing Ganja and on weighing the same was found to be 20.2 kgs including the bag and net weight without the bag was found to be 20.05 kgs. As the petitioner failed to show any licence for carrying the contraband, FIR was registered and he was arrested on the spot. Samples were taken and sent

to the FSL. On completing the investigation, challan was presented. The petitioner approached the Court of Additional Sessions Judge, Gurugram praying for grant of bail, however, the same was declined vide order dated 02.12.2022. Thereafter, the petitioner approached this Court by way of filing CRM-M-327-2023, however, the same was dismissed as not pressed vide order dated 12.01.2023. Hence, the petitioner has approached this Court again by way of filing the present second petition for grant of bail.

Learned counsel for the petitioner has vehemently contended that evidently, the present case has been registered on the basis of a secret information, however, there is blatant violation of provisions of Section 42 of NDPS. He submits that the provisions of Section 42 of the NDPS are mandatory in nature and on receiving the alleged secret information, the same was not reduced into writing and thus, the alleged recovery effected from the petitioner is totally in violation of mandatory provisions of Section 42 of NDPS Act. He submits that even otherwise the weight of the contraband was found to be 20.05 kgs, which is marginally above the commercial quantity i.e. 20 kgs as per the schedule in the NDPS Act. He submits that the petitioner has no criminal antecedents. He further submits that till date the prosecution has not examined any witness. He has submitted that in the facts and circumstances of the case, the petitioner deserves to be granted bail.

Per contra, learned State counsel has opposed the submissions made by learned counsel for the petitioner. She has submitted that specific secret information was received regarding the petitioner in pursuance to the same naka was laid. She submits that the police tried to associate any independent witness from the public but no one consented and hence, the

recovery was effected by the police in accordance with law. She further submits that from the FSL report received, the contraband recovered has been established to be prohibited contraband i.e. Ganja. She submits that there are 13 prosecution witnesses, however, none has been examined so far. On instructions from LASI Rekha, she has submitted that the petitioner has no criminal antecedents. She further submits that on the basis of the disclosure statement of the petitioner, two more accused were named, however, they are yet to be arrested.

Heard.

Evidently, the FIR has been registered on the basis of secret information. It has been submitted before this Court that there is a violation of Section 42 of the NDPS Act as the mandatory provisions of this Section have not been complied with. Even otherwise the contraband recovered was weighing 20.05 kgs of Ganga, i.e. just marginally above the commercial quantity. It is evident that the petitioner is behind bars since 01.09.2022 and till date out of 13 prosecution witnesses none has been examined so far. There is nothing on record to show that the petitioner is involved in any other case of the similar nature. This Court would refrain itself from commenting anything on the merits of the case. However, considering the prayer for grant of bail to the petitioner, this Court is of the view that learned counsel for the petitioner has been able to make out a case for grant of regular bail to the petitioner.

Considering that the trial would take sufficiently long time in its conclusion, the present petition is allowed and the petitioner is ordered to be released on bail to the satisfaction of the concerned trial Court/Duty Magistrate on his furnishing local surety.

Nothing said herein shall be construed as an expression of opinion on the merits of the case.

04.12.2023			(RAJESH BHARDWAJ)
sharmila			JUDGE
	Whether Speaking/Reasoned	:	Yes/No
	Whether Reportable	:	Yes/No