

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-47957-2023

Reserved on: 29.11.2023

Pronounced on: 04.12.2023

JASWANT SINGH

. . . . Petitioner

Vs.

State of Punjab

. . . . Respondent

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Prateek Pandit, Advocate, for the petitioner.

Mr. M.S. Nagra, Asstt. A.G., Punjab.

DEEPAK GUPTA, J.

By way of this petition filed under Section 439 CrPC, petitioner prays for grant of regular bail in case FIR No.277 dated 12.10.2022 registered at Police Station Sultanpur Lodhi, District Kapurthala, under Sections 21/22/29 of the Narcotics Drugs and Psychotropic Substances Act, 1985 [for short 'the NDPS Act'].

2. As per prosecution allegations, 1000 intoxicant tablets were recovered on 12.10.2022 from the possession of co-accused Nirmal Singh @ Bagga, who in his disclosure statement nominated the petitioner to be supplier. Petitioner was apprehended on 29.10.2022. He allegedly suffered disclosure statement on 30.10.2022, but no recovery was effected pursuant thereto. Petitioner then suffered another disclosure statement on 31.10.2022, resulting into recovery of 270 grams of heroin from his house.

3. It is contended by Id. counsel that recovery has been planted upon the petitioner, when he was in custody. It is further contended that recovery is shown to have been effected from the house of the petitioner by

a non-gazetted officer, which is a clear violation of Section 41 read with Section 42 of the NDPS Act. Ld. counsel also contends that petitioner is in custody for the last more than one year; that trial may take long time to conclude and, so in all these circumstances, petitioner be granted bail.

4. Opposing the bail petition, ld. State counsel submits that recovered quantity of contraband from the petitioner falls in the commercial quantity; that petitioner is involved in one more case pertaining to the NDPS Act and so, in these circumstances, petitioner does not deserve to be released on bail.

5. I have considered submissions of both the sides and appraised the record.

6. As per the status report, it is SI Arjan Singh, who on the basis of disclosure statement suffered by the petitioner, effected recovery from the house of the petitioner. Status report does not reveal that any authorisation as required under Section 41 read with Section 42 of the NDPS Act was taken before effecting the search.

7. In *T. Thomson Vs. State of Kerala and another*, 2002(9) SCC 618, it was held by Hon'ble Supreme Court that no authorisation in writing is required when raid/search is conducted by the gazetted officer himself. However, such authorisation is required when gazetted officer wants his subordinates to conduct the search. In *G. Srinivas Goud Vs. State of A.P.*, 2005(4) RCR (Criminal) 353, it has been held by Hon'ble Supreme Court that a non-gazetted officer is required to comply with the provisions of Section 42 of the NDPS Act, while making search/seizure.

8. In view of the aforesaid legal position, when search and seizure has been conducted by a non-gazetted officer, like in present case, it will be highly debatable as to whether the recovery effected from the house of petitioner is legal or not. Besides, the custody certificate reveals that petitioner is in custody for the last 1 year and 22 days. As per the status report, 15 witnesses have been cited by the prosecution, but even the charges are yet to be framed. Thus, trial is likely to take long time to conclude.

9. Though petitioner is involved in one more case pertaining to the NDPS Act, as per the custody certificate, but having regard to the facts and circumstances, as noted above, the rigors of Section 37 of the NDPS Act are required to be balanced with Article 21 of the Constitution of India guaranteeing fundamental right to life and liberty, of which speedy trial forms a part.

10. In view of the aforesaid discussion, but without commenting anything further on merits of the case, the present petition is allowed. Petitioner is admitted to regular bail on his furnishing requisite bail bonds and surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned.

(DEEPAK GUPTA)
JUDGE

04.12.2023

Vivek

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| 1. Whether speaking/reasoned? | Yes |
| 2. Whether reportable? | No |