

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

207 CRM-M-51650-2023
Date of decision: 21.12.2023

Anil Gop ... Petitioner

Vs.
State of Punjab Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present :- Mr. Mohit Vashishat, Advocate for the petitioner.

Mr. A.P.S. Tung, DAG, Punjab.

SUVIR SEHGAL J. (ORAL)

Instant petition has been filed under Section 439 Cr.P.C.,
seeking grant of regular bail to the petitioner in:-

FIR No.	Dated	Police Station	Section
145	03.09.2023	GRP Ludhiana	18 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act')

2. Case of the prosecution is that FIR, Annexure P-1 has been registered when on suspicion a young man was stopped at the Railway Station, Ludhiana and he tried to flee. He was apprehended, his search was conducted and he was found to be carrying 1 kg opium in a transparent polythene bag.
3. Counsel for the petitioner has argued that the petitioner, who has clean antecedents, has been falsely implicated. He submits that the

mandatory provisions of Sections of 42 and 50 of the NDPS Act, have not been complied with as the petitioner has neither been given an option to be searched in the presence of a gazetted officer nor any independent person has been associated at the time of search. Counsel submits that the petitioner is in custody since 05.09.2023 and as investigation qua him is complete and charge has been framed today, he deserves to be enlarged on bail.

4. Opposing the petition, State counsel has submitted that the petitioner has been found to be in conscious possession of contraband and cannot take the defence of legal niceties. He has filed custody certificate dated 20.12.2023 and could not dispute the antecedents of the petitioner. He has specific instructions to state that challan has been presented.

5. Having considered the submissions made by counsel for the parties, this court is *prima facie* of the view that petitioner deserves to be enlarged on bail. Not only does the petitioner enjoy a clean past but the quantity of prohibited substance recovered from him falls within the scope of non-commercial quantity. The bar under Section 37 of the NDPS Act is not attracted. Petitioner, therefore, deserves the concession of regular bail.

6. Without adverting to the merits or demerits of the arguments addressed, petition is allowed and the petitioner is ordered to be released on bail on furnishing bail/surety bonds to the satisfaction of the Trial Court/Duty Magistrate concerned.

7. It is clarified that any observation made hereinabove shall not be construed to be an expression of opinion on the merits of the case.

21.12.2023
pooja saini

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No