

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M No. 316 of 2024 (O&M)
Date of Decision: 13.02.2024

Davies

..... Petitioner

Versus

State of U.T., Chandigarh

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Robin Singh Hooda, Advocate
for the petitioner.

Mr. Manish K. Bansal, P.P., U.T., Chandigarh

HARKESH MANUJA, J. (ORAL)

The petitioner, by way of present petition filed under Section 439 Cr.P.C., seeks grant of regular bail pending trial in case bearing FIR No. 46 dated 29.03.2022, under Section 21 of NDPS Act, 1985, registered at Police Station Sector 39, Chandigarh, wherein he was implicated against the alleged recovery of 314 grams of *heroin*.

[2] Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the case; he is in custody since 29.03.2022 and the conclusion of trial will take long time. While relying upon the judgment rendered by the Hon'ble Supreme Court in ***Criminal Appeal No. 451 of 2011***, titled ***“Bothilal Versus The Intelligence Officer Narcotics Control Bureau”***, he also submits that the parcels of the intoxicant material were prepared and stamped at the

spot and not in the presence of Magistrate as required in terms of Section 52-A of the NDPS Act, therefore, there was non-compliance of Section 52-A of the NDPS Act. He thus prays for grant of regular bail to the petitioner.

[3] On the other hand, learned State Counsel vehemently opposes the prayer for grant of regular bail to the petitioner while submitting that the petitioner is a foreign national; the recovery involved herein falls within the definition of commercial quantity; and the trial is at fag end, as only 05, out of total 15 prosecution witnesses, remained to be examined.

[4] I have heard learned counsel for the parties and gone through the paper-book. I find substance in the submissions made by learned counsel for the petitioner.

[5] In the present case, the petitioner is already behind the bars for the past almost 01 year and 11 months and the investigation already stands concluded with the filing of challan followed by framing of charges. Moreover, 05 prosecution witnesses are yet to be examined, whereas the other two witnesses have been examined in part. Also, the plea raised by learned counsel for the petitioner, while relying upon the ***Bothilal's case (supra)*** shall be appreciated at the stage of trial. Considering the aforesaid facts, I do not find any justification to extend the incarceration of the petitioner.

[6] In view of the above, but without commenting anything on the merits of the case, lest it may prejudice the trial, the present petition is **allowed** and the petitioner is ordered to be released on regular bail on his furnishing adequate bail/surety bonds **(any surety of Indian National)** to the satisfaction of the Trial Court / Illaqa Magistrate / Duty Magistrate concerned.

[7] It is made clear that this order may not be construed as an expression of opinion on the merits of the case.

February 13, 2024
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(HARKESH MANUJA)
JUDGE

<i>Whether Speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>