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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-12164-2023
DECIDED ON: 04.01.2024

SONU KUMAR

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Kuldeep Singh Siwach, Advocate for
Mr. Rakesh Gupta, Advocate
for the petitioner.

Mr. G.S. Sidhu, AAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court has been invoked under Section 439 Cr.P.C., for grant of regular bail to the petitioner in FIR No.244 (Annexure P-1), dated 18.12.2021, under Sections 22 & 61 of NDPS Act, 1985, registered at Police Station Lalru, District SAS Nagar.
2. Learned counsel for the petitioner contends that the petitioner has been roped in the instant FIR on the basis of false and cooked up story by the prosecution and a fake recovery has been planted upon him consisting of 115 intoxicant injections and 115 Glassvails make avil (10 ml each). He also submits that since the date of his arrest on 20.10.2021, he was taken into custody and he is not involved in any other case earlier also. He further submits that the provisions of Section 50 of the NDPS Act has not been

complied with, as the alleged search has not been conducted in the presence of any Gazetted Officer or before the Magistrate.

3. On the other hand, learned State counsel has produced the custody certificate of the petitioner, which is taken on record, to demonstrate that he has suffered incarceration for a period of 02 years and 14 days and submits that the recovery from the petitioner is commercial in nature and out of eight witnesses, 4 witnesses have already been examined along with one IO, who has been partly examined and, therefore, seeks rejection of the concession of regular bail to the petitioner.

4. Looking into the totality of facts and circumstances and also the fact that investigation stands complete; challan stands filed; charges have been framed on 09.08.2023; the petitioner has suffered incarceration for a period of 02 years and 14 days; out of total eight witnesses, 4 witnesses have already been examined along with one IO, who has been partly examined; the petitioner is not involved in any other case, which is evident from custody certificate, meaning thereby the petitioner is a person of clean antecedents and is not a habitual offender added with the fact that the provisions of Section 50 of the NDPS Act has not been complied with, is a matter of evidence, which may be proved during the trial proceedings but till then the petitioner could not be kept behind the bars.

5. This Court is sanguine of the fact that according to the proposition settled by the Apex Court that keeping somebody behind the bars, till his guilt is proved, for an indefinite period amounts to infringement of his right to life and liberty, as enshrined under Article 21 of Constitution of India and is against the principle "*bail is rule*" and "*jail is an exception*".

6. In view of the aforesaid discussions made hereinabove, the petitioner is directed to be released on regular bail on his furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.
7. In the afore-said terms, the present petition is hereby allowed.
8. However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

04.01.2024
Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>