

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

CRM-M-38868-2023

Date of Decision: 09.01.2024

Sanjay Kumar

..... Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. A.P. Kaushal, Advocate, for the petitioner.

Mr. Navneet Singh, Sr. DAG, Punjab.

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.255 dated 12.10.2022, registered under Sections 18(b), 27, 61, 85 of NDPS Act, at Police Station STF Phase-4, Mohali.

Adumbrated facts of the case are that on 12.10.2022, a secret information was received that Sanjay Kumar (petitioner) son of Hem Raj Singh is involved in smuggling of opium in Chandigarh and Mohali and he was coming from Zirakpur-Ambala road side on his Aactiva bearing No.PB-70G-8343 and if Naka is laid, he can be apprehended alongwith the contraband. On finding the information reliable, *ruqa* was sent through constable, namely Balwant Singh for registration of the case against Sanjay Kumar. Then *Naka* was laid. Thereafter, Sanjay Kumar was stopped at the *Naka* and from the search of his Aactiva scooter, 2 kgs of opium was recovered from the dicky of the Aactiva. Sanjay Kumar-petitioner was arrested on the spot. Samples were taken from the contraband and further investigation commenced. The petitioner approached the Court of Special Judge, SAS Nagar Mohali through 2nd application praying for grant of bail, however, the same was declined vide order dated 19.06.2023. The petitioner

approached this Court by way of filing CRM-M-5600-2023, however, the same was dismissed as withdrawn vide order dated 02.06.2023. 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 the petitioner has been falsely implicated in this case. He has submitted that admittedly, the case of the prosecution against the petitioner is on the basis of secret information, however, there are blatant violation of Section 42 of the NDPS Act in this case. He has submitted that no independent witness was joined at the time of recovery and the offer was given in violation of Section 50 of NDPS Act. It is submitted that the petitioner has no criminal antecedents. He has further submitted that once there are violation of the mandatory provisions of Sections 42 and 50 of the NDPS Act in the present case, false implication of the petitioner is writ large. He has submitted that the petitioner is behind bars since the date of his arrest i.e. 12.10.2022, but till date prosecution has not been able to conclude the trial. It is submitted that even otherwise the contraband recovered from the petitioner was 2 kgs of opium, which falls under the category of non-commercial quantity and thus, provisions of Section 37 of the NDPS Act are also not attracted. 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. He has submitted that on receiving secret information, *ruqa* was sent and on complying with the necessary provisions of Section 42 of the NDPS Act, *naka* was laid. He submits that the petitioner was duly served with a notice under Section 50 of the NDPS Act and thus, there is no violation of Section 50 of the NDPS

Act as well. He has submitted that recovery was effected by complying with the statutory provisions of NDPS Act. He has further submitted that out of total 13 prosecution witnesses, only 4 witnesses have been examined so far. He submits that as per instructions received, the petitioner is not involved in any other case except the present case.

Heard.

Evidently, the case against the petitioner is based on a secret information and he was arrested on the spot on 12.10.2022. The petitioner is behind bars since the date of his arrest. Till date out of 13 prosecution witnesses, only 4 witnesses have been examined. Admittedly, the alleged recovery from the petitioner is of 2 kgs of opium which falls under the non-commercial quantity, thus, provisions of Section 37 are not attracted. 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.

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

09.01.2024
sharmila

Whether Speaking/Reasoned
Whether Reportable

(RAJESH BHARDWAJ)
JUDGE

: Yes/No
: Yes/No