



214 **IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

CRM M-16059-2024 (O&M)
Date of Decision: 13.02.2025

Sarvan Kumar

..... Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR.JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Madhur Singh, Advocate (**Legal-Aid Counsel**)
for the petitioner.

Ms. Avneet, AAG, Punjab.

MAHABIR SINGH SINDHU. J.

Present petition has been filed under Section 439 of the Code of Criminal Procedure (for short “Cr.P.C”) for seeking bail pending trial in FIR No.106 dated 02.09.2023 registered under Section 22(c) of Narcotic Drugs & Psychotropic Substances Act, 1985 (for short “NDPS Act”), at Police Station, Maur, District Bathinda.

2. Allegations are that on 02.09.2023 petitioner was found in possession of 1140 tablets along with 7 vials of Omerex 100 ml each and 07 strips of Carisoma (commercial quantity), without any permit or licence.

3. Learned counsel for petitioner contends that he is in custody since 04.09.2023; out of total 11 prosecution witnesses, only 06 have been examined and trial is likely to take sufficient long time. Further contends that there is complete violation of Section 50 of the NDPS Act inasmuch as the search was not conducted in the presence of Gazetted Officer or before a Magistrate; nor



the contraband was seized by any empowered Police Officer under the NDPS Act and reference in this regard has been made to the testimony of ASI Iqbal Singh (PW-5), which is taken on record as Mark 'X'. Registry to do the needful.

4. *Per contra*, ld. State counsel while opposing the prayer submits that petitioner was found in possession of commercial quantity of medicines; thus, in view of the bar of Section 37 of the NDPS Act, he does not deserve the concession of bail.

5. Heard learned counsel for the parties and perused the paper-book.

6. Before proceeding further, it is necessary to recapitulate the relevant part of the testimony of ASI Iqbal Singh (PW-5) and the same reads as under:-

“No notice under Section 50 was given to the accused. MHC received the telephonic call from Hardeep Singh. I had no direct information regarding the accused. The recovered case property was with Hardeep Singh when we apprehended the accused. No private person or any official/gazetted officer was called at the spot except the persons of Anti-Drug Committee. No statement except Hardeep Singh was recorded in this case. No other persons agreed to give their statement. The search was conducted by Hardeep Singh and committee members prior to our reaching at the spot.”

Perusal of above extract reveals that no contraband was recovered from the petitioner by the Arresting/Seizing Officer; rather the search is alleged to have been conducted by Hardeep Singh, a native of the village along with members of Anti-Drug Committee, who have no authority to seize the contraband under the NDPS Act.

7. In view of the above, *prima facie*, it appears that there is a glaring infirmity while effecting recovery of the alleged contraband from the petitioner



and legality of same can be decided by learned Special Court at the time of final adjudication.

8. Thus, in such a scenario, there is no hesitation to record the “Twin Test” satisfaction in favour of the petitioner as per Section 37(1)(ii) of the NDPS Act viz., (i) the recovery of alleged contraband from petitioner was not effected by any authorized officer; therefore, *prima facie*, no offence under NDPS Act is made out; (ii) petitioner is stated to be not involved in any case under the NDPS Act.

9. Needless to say that above “Twin Test” satisfaction has been recorded only for the purpose of bail application and same be not treated as an opinion on pending trial.

10. It is not in dispute that petitioner is in custody since 02.09.2023 and out of total 11 prosecution witnesses, only 06 have been examined till date; thus conclusion of trial is likely to take sufficient long time.

11. Resultantly, there is no option, except to allow the petition.

12. Consequently, petition is allowed. Petitioner is ordered to be released on bail in this case on his furnishing bail bonds and surety bonds to the satisfaction of learned Special Court/Duty Magistrate concerned.

13. The above observations be not construed as an expression of opinion on the merits of the case in any manner.

Pending criminal misc. application(s), if any, shall also stand disposed off.

13.02.2025
SN

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable: Yes/No