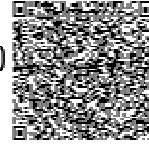


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**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND  
HARYANA AT CHANDIGARH**

219

CRM-M-41274-2024 (O&amp;M)

Date of decision: 20.01.2025

**Ravi Gupta @ Bhola****...Petitioner****Versus****State of Punjab****...Respondent****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present:- Mr. Bhavesh Aggarwal, Advocate  
for the petitioner.

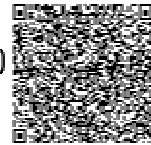
Ms. Swati Batra, Deputy Advocate General, Punjab.

**MANISHA BATRA, J. (Oral)**

1. This petition has been filed by the petitioner under Section 439 of Cr.P.C. seeking regular bail in case bearing FIR No. 116 dated 07.10.2022, registered under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (*for short 'NDPS Act'*) at Police Station Doraha, District Khanna.

2. Brief facts of the case relevant for the purpose of disposal of this petition are that on 07.10.2022, the petitioner was apprehended by a police party headed by ASI Hardam Singh and recovery of 25 grams of heroin and 52 gram Methamphetamine (*popularly know as 'Ice'*) was effected from him. The petitioner was formally arrested at the spot. After completion of necessary investigation and usual formalities, *challan* under Section 173 of Cr.P.C. was presented in the Court and presently, the petitioner is facing trial for commission of aforesaid mentioned offence. He had moved an application before the learned trial Court for grant of regular bail but the same had been dismissed, vide order dated 19.04.2024

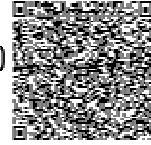
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3. Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in this case. The alleged recovery of the intoxicant tablets was in fact planted upon the petitioner by picking up him from his house. No independent witness was joined by the police party. Mandatory provisions of the NDPS Act were not complied with. The Investigating Officer ASI Hardam Singh, who got registered the present FIR against the petitioner, made his personal search and investigated the entire case, was in fact not competent to do so in terms of the provisions of Sections 42 and 67 of the NDPS Act as he was an *Ad hoc* ASI and as per notification No. SO 33/CA, 61/85, Sections 42 and 67/87 dated 03.09.1987, only an officer of the rank of Assistant Sub Inspector of Police and above is eligible to exercise the powers and perform the duties specified in the aforesaid sections. Investigation has since been completed and *challan* has been presented. Conclusion of trial is likely to take time. The petitioner is in judicial custody since 07.10.2022. No useful purpose would be served by keeping him in custody anymore. It is, therefore, urged that the petition deserves to be allowed. To fortify his arguments, learned counsel for the petitioner has placed reliance upon the authorities cited as ***Gurjant Singh @ Janta vs. State of Punjab : 2013 (4) RCR (Criminal) 874, Bikkar Singh vs. State of Punjab : 2006 (3) RCR (Criminal) 16*** and order dated 06.08.2020 passed by this Court in ***CRM-M-33369-2019***, titled as ***Davinderdeep Singh @ Aafta vs. State of Punjab***.

4. Status report along with the custody certificate of the petitioner has been filed by the respondent-State. It is submitted therein and learned Deputy Advocate General, Punjab has argued that the petitioner was apprehended by the police party on 07.10.2022 and recovery of 25 grams of

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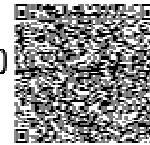


heroin and 52 gram Methamphetamine. The quantity of the Methamphetamine falls under the commercial quantity. He is involved in one more case under the NDPS Act. Trial is going on at a proper pace. The petitioner, if extended benefit of bail, can abscond or indulge in similar offences. Hence, it is urged that the petition is liable to be dismissed.

5. I have heard learned counsel for the parties at considerable length and have also gone through the record carefully.

6. As per the allegations, the petitioner was apprehended by the police party on 07.10.2022 and recovery of 25 grams of heroin and 52 gram Methamphetamine was effected from him. Undoubtedly, the quantity of the Methamphetamine falls under the commercial quantity. However, a perusal of the status report shows that the plea of the petitioner that ASI Hardam Singh was not competent to conduct personal search of the petitioner or investigate the matter being an *Ad hoc* ASI, has not been disputed by the respondent-State. It *prima facie* shows that there has been gross violation of the notification dated 03.09.1987, as per which, only officers of the rank of ASI and above can exercise powers and perform duties specified under Sections 42 and 67 of the NDPS Act. A perusal of the authorities as relied upon by the petitioner shows that the accused therein have been granted concession of bail and even have been acquitted on this very ground. Investigation has since been completed and *challan* has been presented. Out of total 10 prosecution witnesses, only 02 witnesses have been examined so far, which means conclusion of trial is likely to take time. The petitioner is in judicial custody since 07.10.2022. Keeping in view ratio of law as laid down in the aforecited authorities, the period of incarceration of the petitioner, the delay in

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conclusion of trial and also in view of the attendant facts and circumstances of the case, I am of the considered opinion that no useful purpose would be served by keeping the petitioner in custody anymore. Accordingly, the present petition is allowed. The petitioner is ordered to be released on regular bail, subject to his furnishing personal/surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned. However, it will be open for the prosecution to apply for cancellation of bail in case the petitioner is found involved in any other subsequent case.

7. It is made clear that any observation made herein above is only for the purpose of deciding the present petition and the same shall have no bearing on the merits of the case.

20.01.2025

*Waseem Ansari*

**(MANISHA BATRA)  
JUDGE**

*Whether speaking/reasoned*

*Yes/No*

*Whether reportable*

*Yes/No*