

**In the High Court for the States of Punjab and Haryana
At Chandigarh**

CRM-M-37061-2020 (O&M)
Date of Decision:-18.11.2020

Kulwant Kumar ... Petitioner

Versus

State of Haryana ... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Rahul Sidher, Advocate for the petitioner.

Mr. Karan Sharma, AAG, Haryana.
assisted by SI Mahender Singh.

(proceedings conducted through video conferencing)

GURVINDER SINGH GILL, J.(Oral)

1. The petitioner has approached this Court seeking grant of regular bail in respect of a case registered vide FIR No.544 dated 31.10.2019 at Police Station City Fatehabad, District Fatehabad, Haryana under Section 21-C of Narcotic Drugs and Psychotropic Substances Act, 1985, wherein the allegations are to the effect that the petitioner was found in possession of 253 grams of 'heroin', which was contained in a polythene bag.
2. The learned counsel for the petitioner has submitted that in the present case the contraband was weighed alongwith polythene bag and since the total weight of the contraband in the polythene bag is marginally above the quantity prescribed to be defined as commercial quantity i.e. total of 253 grams, the recovered contraband in every likelihood was less than 250 grams, the limit prescribed for commercial quantity.

3. Opposing the petition, the learned State counsel has submitted that no such presumption can be drawn at this stage that the weight of the contraband was less than 250 grams since the total weight was found to be 253 grams and that the weight of the polythene bag cannot be said to be 3 grams or more.
4. I have considered rival submissions addressed before this Court.
5. A perusal of the FIR would show that the contraband was weighed alongwith the polythene bag and the total weight of the contraband with the polythene bag was found to be 253 grams. Since the said weight is marginally above the quantity prescribed as 'commercial quantity' of 'heroin', it will be detabable as to whether the weight of the actual contents of contraband would fall in commercial quantity or as to whether the petitioner would be entitled to benefit of doubt as far as weighment is concerned. In any case, since the petitioner has been behind bars since the last more than 1 year and is not stated to be a previous convict and till date not even a single PW has been examined, further detention of the petitioner will not serve any useful purpose. The petition, as such, is accepted and the petitioner is ordered to be released on regular bail on his furnishing bail bonds/surety bonds to the satisfaction of learned Trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.
6. It is, however, clarified that none of the observations made above shall be taken to be an expression on merits of the main case.

18.11.2020

pankaj

**(Gurvinder Singh Gill)
Judge**Whether speaking /reasoned
Whether ReportableYes / No
Yes / No