

IN THE HIGH COURT OF PUNJAB & HARYANA AT  
CHANDIGARH

206-2

CRM-M No.28328 of 2021  
Date of decision:30.09.2021

Mahinder Singh @ Jaily

... Petitioner

Vs.

State of Punjab

... Respondent

**CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL**

Present: Mr. Ashish Aggarwal, Advocate  
for the petitioner.

Mr. Prabhjot Singh Walia, AAG, Punjab.

\*\*\*

**SUVIR SEHGAL J. (ORAL)**

Heard through video conferencing.

This is the first petition filed by the petitioner under Section 439 of Cr.P.C. for grant of regular bail in case FIR No.13 dated 02.03.2021 registered under Sections 21 (c), 27 (a) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, (for short “the Act”) at Police Station Valtaha, District Taran Taran, Annexure P-1.

As per the case of the prosecution, FIR, Annexure P-1, was registered when, on suspicion, a Hindu gentleman was stopped and upon search, recovery of 265 grams of heroin was effected from him. Upon enquiry, he disclosed his name as Mahinder Singh @ Jaily (present petitioner), and was arrested on the spot.

Counsel for the petitioner submits that the petitioner is 28 years old young man, who is an agriculturist and has been falsely implicated in the case. He has referred to the photographs, Annexure P-2, taken from the CCTV footage to submit that the police party forcibly

picked him up from his residence on 02.03.2021 around 06.00 am and later a false case has been foisted upon him. He has referred to representation dated 13.04.2021, Annexure P-3, which has been addressed to the Senior Superintendent of Police, Tarn Taran, by the brother of the petitioner requesting for cancellation of the false case against the petitioner. He submits that on an application submitted by the petitioner, the trial court vide order dated 25.06.2021, Annexure P-6, has directed the telecom companies to preserve the call details of 02.03.2021 of all the police officials, who were part of the raiding party. He has also submitted that a petition (CRM-M-23585-2021) was filed by the brother of the petitioner before this Court for handing over the investigation of the FIR, Annexure P-1, to an independent agency, but after the challan was presented the same was withdrawn on 13.09.2021. In any case, counsel submits, that the recovery allegedly effected from the petitioner is marginally above the maximum limit of non-commercial quantity as prescribed under the provisions of the Act. He asserts that the petitioner, who has clean antecedents, is no longer required for custodial interrogation and deserves to be enlarged on bail.

Per contra, learned State counsel, upon instructions from SI Charan Singh, has opposed the petition on the ground that the quantum of contraband recovered from the petitioner is commercial and bar under Section 37 of the Act is attracted. He submits that the representation and photographs relied upon by the petitioner are yet to be verified. He asserts that the search and seizure from the petitioner was conducted in the presence of a Gazetted Officer and the mandatory provisions of the NDPS Act have been duly complied with. Upon instructions, he submits

that the challan has been presented on 28.09.2021, though the charge is yet to be framed. However, on the basis of the custody certificate, he could not deny the fact that the petitioner is not involved in any other case.

Heard.

This Court in CRM-M-30496-2021 titled as Ajmer Singh versus State of Punjab decided on 09.08.2021 has held that where the recovery effected from an accused is marginally above the threshold limit of commercial quantity as laid down in the notification issued under the NDPS Act, the accused is entitled to the benefit of bail.

Keeping in view the facts and circumstances, the clean antecedents of the petitioner, the nature of allegations and the fact that he is in custody for the last more than 06 months and the trial is likely to take time to conclude, the petitioner is ordered to be released on bail during the pendency of the trial.

Without commenting upon the merits or de-merits of the arguments addressed by the counsel for the parties, the petition is allowed. The petitioner is ordered to be released on bail on furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned.

It is clarified that any observation made hereinabove shall not be construed to be an expression of opinion on the merits of the case.

**30.09.2021**

*sheetal*

**(SUVIR SEHGAL)**  
**JUDGE**

|                           |        |
|---------------------------|--------|
| Whether Speaking/Reasoned | Yes/No |
| Whether Reportable        | Yes/No |