

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

208

CRM-M-30565-2021

Date of Decision : 15.12.2021

Jaspal Singh @ Judge

...Petitioner

Versus

State of Punjab

...Respondent

(Through Video Conferencing)

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Veneet Sharma, Advocate for the petitioner.

Mr. Sandeep Singh Deol, DAG, Punjab.

Harsimran Singh Sethi, J. (Oral)

The present petition has been filed under Section 439 Cr.P.C. for the grant of regular bail to the petitioner in respect of FIR No. 001 dated 02.01.2021 registered under Sections 21, 25 & 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short, 'NDPS Act') and Section 25 of the Arms Act, 1959 at Police Station Special Task Force (STF), Mohali, District S.A.S. Nagar, Mohali.

Learned counsel for the petitioner argues that in the present case, the quantity of contraband which has been recovered from the petitioner is 255 grams and that too when weighed along with carry bag, hence, it is a debatable issue whether the quantity of contraband recovered from the petitioner is commercial in nature or not. Learned counsel for the petitioner further submits that in somewhat similar case, a Coordinate Bench of this Court, where the quantity of contraband recovered was 267 grams but was weighed along with carry bag, has held that where the fact

whether the contraband recovered is of commercial quantity, is in dispute, benefit of regular bail has been extended to the petitioner therein. Reliance is placed on the order passed by a Coordinate Bench of this Court in CRM-26107-2020 on 09.09.2021 titled as **Gurbir Singh @ Gorra vs. State of Punjab.**

Learned State counsel, who has also joined the proceedings through video conference concedes the fact that as per the recovery memo, the contraband was weighed along with carry bag though, the said act should not have been done by the Investigating Agency. Learned State counsel submits that the Prosecuting Agency is clear that the contraband recovered from the petitioner is of commercial quantity but the factum that the recovered contraband was weighed along with carry bag and weight was 255 grams, which is marginally above the commercial quantity.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

Once, the quantity of recovered contraband is in dispute and factum that the contraband was weighed along with carry bag and it weighed 255 grams and whether the carry bag weighed more than 05 grams or not so as to bring the recovery of contraband within the category of commercial in nature so as to invite the rigors of Section 37 of the NDPS Act will only be proved during the course of trial. Furthermore, a Coordinate Bench of this Court in Gurbir.Singh's case (supra), in somewhat similar facts, where the quantity of the contraband recovered was 267 grams weighed alongwith carry bag, has extended the benefit of regular bail by treating the said recovery of the contraband as debatable issue as to whether the same is commercial in nature or not.

In view of the facts mentioned hereinbefore, coupled with the fact that there are no other cases pending against the petitioner, the petitioner has made out a case for the grant of regular bail keeping in view the facts noticed above especially, when learned counsel for the petitioner undertakes that the petitioner will not obstruct the trial or influence the witnesses, whose statements are yet to be recorded in any manner. In case of default of the above undertaking, the State will be at liberty to approach this Court for passing appropriate orders.

Without commenting upon the merits of the case, it is directed that the petitioner be released on regular bail, subject to the satisfaction of trial Court/Duty Magistrate concerned.

However, it is made clear that anything observed herein shall not be construed to be an expression of any opinion on the merits of the case.

December 15, 2021
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No