

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

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**CRM-41317-2021 in
CRM-M-36955-2021.
Date of Decision: 15.12.2021.**

Shanty	Versus	Applicant/Petitioner.
State of Punjab		Respondent.

CORAM: HON'BLE MR. JUSTICE LALIT BATRA

Present: Mr. Piyush Sharma, Advocate for applicant/petitioner.
Mr. Anmol Singh Sandhu, Assistant Advocate General, Punjab.

Lalit Batra, J.(Oral)

Case has been taken up for hearing through Video Conferencing.

CRM-41317-2021

This application under Section 482 Cr.P.C. has been moved for preponing the date of hearing of the main petition, which is already fixed for 27.01.2022.

Notice of application.

At the asking of Court, learned State counsel accepts notice and stated that he has no objection if application is allowed.

In view of grounds mentioned in the application and no objection by learned State counsel, hearing of the main petition is preponed and same is taken on Board today itself.

CRM is allowed.

Main Case

This petition under Section 439 Cr.P.C for grant of regular bail

under Sections 21 and 29 of NDPS Act, registered at Police Station Cantt Ferozepur, District Ferozepur.

Learned counsel for the petitioner *inter alia* contends that petitioner has no nexus whatsoever with the alleged offence. He further submits that allegedly contraband 250 grams Heroin was recovered from the conscious possession of petitioner. He further urges that allegedly during personal search of co-accused Sachin, contraband 20 grams Heroin was recovered. He further urges that in view of ratio laid down in **Amar Singh Ramjibhai Barot Vs. State of Gujarat, (2005) AIR (SC) 4248,** recovery has to be treated as individual recovery because the same was effected in personal search of petitioner. He further urges that even otherwise alleged recovery of contraband (250 grams Heroin) is to be termed as 'non-commercial quantity'. He further urges that in view of ratio laid down in **Sandeep Kumar Vs. State of Punjab, 2019(4) RCR (Criminal) 741,** recovery of the contraband would remain debatable. He further urges that sub-clause (viia) of Section 2 of NDPS Act defines the term “commercial quantity” in relation to narcotic drugs and psychotropic substances, means any quantity greater than the quantity specified by the Central Government by notification in the Official Gazette. He further urges that in terms of Serial No.56 of the Table attached to the NDPS Act when read in consonance with sub-clause (viia) of Section 2 of NDPS Act, 'Heroin' weighing upto 250 grams is to be termed as “non-commercial quantity” and as such alleged contraband is to be categorized as of “non-commercial quantity”. He further submits that petitioner is languishing in custody since 01.03.2021 and he is no more required by the Police for any investigation

Section 173 Cr.P.C. (*Challan*) has been presented in Court. He further urges that since trial of the case would take sufficient time to conclude, no useful purpose would be served by keeping the petitioner in custody further and he may be released on bail.

On the other hand, learned State counsel while opposing instant petition has vehemently argued that keeping in view seriousness of offence, petitioner does not deserve the concession of bail.

I have heard learned counsel for the parties and have carefully gone through the record of the case.

At this stage, without commenting anything on the merits of the case lest it may prejudice the outcome of the trial but taking into consideration the fact that petitioner is languishing in custody since 01.03.2021; that petitioner is no more required by the Investigating Agency for investigation purpose as after completion of investigation, final report as envisaged under Section 173 Cr.P.C. (*Challan*) has been presented in Court and since trial of the case would take sufficient time to conclude, no useful purpose would be served by detaining the petitioner in custody further, thus, he deserves the concession of bail.

In view of above, instant petition for grant of regular bail moved by petitioner-**Shanty** is allowed and he is ordered to be released on bail on his furnishing personal bond and surety bond to the satisfaction of Trial Court/Chief Judicial Magistrate/Duty Magistrate, Ferozepur, as the case may be.

(LALIT BATRA)
JUDGE

15.12.2021
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