

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

219

**CRM-M-11230-2022
Date of decision: 11.07.2022**

ZOHAR AHMED MALIK

....Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present : Mr. Prateek Pandit, Advocate
for the petitioner.

Mr. Karanbir Singh, AAG, Punjab.

VINOD S. BHARDWAJ. J. (ORAL)

1. The present petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the petitioner in case bearing FIR No. 257 dated 17.12.2021 registered under Section 21 of the Narcotics Drugs and Psychotropic Substances, Act, 1985 at Police Station Division No.8, District Jalandhar.

2. The FIR in question had been registered at the instance of Sub Inspector Ashok Kumar who has alleged that on 17.12.2021 at about 6:00 p.m. when police party was present at Focal Point Chowk, they received an information that the petitioner along with other co-accused are standing at B.S.T. Transport Chowk, Transport Nagar, Jalandhar in order to supply the Heroin. Finding this information quite credible, the proceedings were instituted and the petitioner as well as co-accused were apprehended. Notice under Section 50 of the NDPS

Act is stated to have been served upon the petitioner as well as

co-accused wherein the option was exercised by the accused to get the search conducted by some Gazetted Officer where upon ACPD, Jalandhar was called at the spot who again served a notice under Section 50 of the NDPS Act to both the accused. Upon personal search of the pocket of the jacket worn by the Riaz Ahmed Khan, 750 grams of Heroin was recovered while upon the search of the petitioner 250 grams of Heroin was recovered.

3. Learned counsel appearing on behalf of the petitioner contends that the petitioner was arrested on 17.12.2021 and has already undergone an actual custody of 06 months and 16 days. It is further contended that the petitioner has no other criminal antecedents. It is also argued that the bail application submitted by the petitioner was dismissed by the Judge, Special Court, Jalandhar vide order dated 27.01.2022 by observing that the recovered quantity of Heroin measuring 250 grams falls in commercial quantity whereas the said reasoning adopted by the Judge, Special Court is incorrect inasmuch as commercial quantity has been defined under Section 2 (viia) of the NDPS Act & the Schedule and the same prescribes the quantity to be greater than the quantity specified by the Central Government in its Notification. To hold that the recovered quantity is a commercial quantity, the same must exceed 250 grams. Since the quantity in question is 250 grams and does not exceeded 250 grams, hence, it is a non-commercial quantity.

4. Reliance is also placed upon judgment of this Court in the matter of “*Gurdeep Singh and other versus State of Punjab*” decided on 21.02.2022 passed in CRM-M-3393-2022. A further reference is

also made to the judgment of Hon'ble Supreme Court in the matter of "***Amarsingh Ramjibhai Barot versus State of Gujarat***" reported as **2005 (7) SSC 550** to contend that when two accused are apprehended together and who have individually carried the contraband, in the absence of any conspiracy of the accused persons being in conspiracy with each other or being together in the same, while computing the quantity of contraband possessed by both the accused persons, the same could not be added to bring the same within the meaning of commercial quantity.

5. The aforesaid judgment of the Hon'ble Supreme Court followed by this Court in the matter of "***Jaffar Iqbal and others versus State of Punjab***" reported as **2014 (3) R.C.R. (Criminal) 302**. In so far as the computation under Section 2 (viia) of the NDPS Act is concerned, a reference is also made to the judgment of "***Chanda Soni (Smt.) @ Pushpa versus State of Rajasthan***" reported as 2010 (3) R.C.R. (Criminal) 728 as well to the judgment in the matter of "***Vakil versus State of Haryana***" reported as **2015 (6) R.C.R. (Criminal) 754**.

6. Learned counsel for the petitioner further contends that investigation in the case is complete and final report has already been filed. However, charge has not been framed so far and that the conclusion of the trial shall take long time.

7. Mr. Karanbir Singh, AAG, Punjab appearing on behalf of the respondent-State does not dispute the aforesaid fact that the recovery of only 250 grams of Heroin was effected from the petitioner. The judgments relied upon by the learned counsel appearing on behalf of the petitioner are not controverted.

8. I have heard learned counsel appearing on behalf of the respective parties and have gone through the record with their assistance.

9. Thus, on a plain reading of the bare provisions as well as the judgment referred to above, the recovered quantity cannot be termed as commercial quantity since it is not more than 250 grams as notified by the Central Government. Further, there are no criminal antecedents of the petitioner. Besides, the petitioner has been in custody for more than 06 months and trial has not yet commenced. Considering the totality of the circumstances, I deem it appropriate to enlarge the petitioner on bail to the satisfaction of the trial Court.

10. The instant petition is allowed and the petitioner is ordered to be released on bail on his furnishing requisite bail bond/**heavy surety** bond to the satisfaction of the Trial Court/Duty Magistrate, concerned.

11. It is made clear that the petitioner shall not extend any threat and shall not influence any prosecution witnesses in any manner directly or indirectly.

12. The observation made hereinabove shall not be construed as an expression on the merits of the case and the trial Court shall decide the case on the basis of available material.

The petition is allowed.

(VINOD S. BHARDWAJ)
JUDGE

JULY 11, 2022
vishal sharma

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