

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH
(216)

CRM-M-13683-2021
Date of decision:- 24.03.2022

Nitesh Kumar

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Amit Sharma, Advocate for the petitioner.

Mr. P.S.Walia, AAG, Punjab for State-respondent.

...

SUVIR SEHGAL, J. (ORAL)

Heard through video conferencing.

This is the second petition filed under Section 439 of the Code of Criminal Procedure, 1973 seeking post-arrest bail in case FIR No.120 dated 23.11.2019, registered for offences under Sections 21, 29 and 25 of Narcotic Drugs and Psychotropic Substances Act, 1985, at Police Station Task Force, Range Ludhiana, Annexure P-1.

As per the case of the prosecution, FIR, Annexure P-1, has been registered when two persons, who were travelling on a motorcycle, were intercepted and 530 grams of *Heroin* was recovered from one of them.

By referring to the reply (Annexure P-2) filed by way of an affidavit of Deputy Superintendent of Police, Special Task Force, Ludhiana Range, Ludhiana in CRM-M-12493-2020, the first petition preferred by the petitioner, counsel contends that the recovery of *Heroin* was effected from a

tiffin, being carried by co-accused, Arun Kumar, who was on the pillion on the motorcycle driven by the petitioner. Counsel urges that although the petitioner is the owner of the two wheeler, but no recovery has been effected from him. He asserts that after the withdrawal of the first petition in July, 2020, charge has been framed in February, 2022 and the prosecution evidence is yet to start and the petitioner, who is in custody since 23.11.2019, deserves to be released on bail.

Per contra, learned State counsel has filed Custody Certificate dated 23.03.2022, which is taken on record, and has opposed the petition by submitting that the recovery effected from the co-accused falls within the ambit of commercial quantity. He further submits that besides the contraband, one small electronic weighing machine as well as 200 small empty pouches were also recovered from a polythene bag. As per his instructions, co-accused, Arun Kumar, is in custody and there are sixteen prosecution witnesses, though none has been examined.

I have considered the respective submissions of counsel for the parties.

Admittedly, there is no recovery effected from the petitioner, though his complicity in the offence would be a matter of debate before the Trial Court. Considering the fact that the petitioner has been in incarceration for the last two years and four months, and is not involved in any other criminal case, the Court is of the view that he deserves to be enlarged on bail as the trial is likely to take time to conclude.

Petition is allowed.

Without adverting to the arguments raised by counsel for the parties, petitioner is ordered to be released on bail on his furnishing adequate bail/surety bonds to the satisfaction of the Illaqa Magistrate/Duty Magistrate concerned.

Nothing said hereinabove shall be construed to be an expression of opinion the merits of the case.

(SUVIR SEHGAL)
JUDGE

24.03.2022
Kamal

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No