

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

207

**CRM-M-16914-2022
Decided on : 13.09.2022**

Vishal Gupta

. . . Petitioner(s)

Versus

State of Punjab

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Rajbir Singh, Advocate
for the petitioner(s).

Mr. J.S. Arora, DAG, Punjab.

SANJAY VASHISTH, J. (Oral)

The instant petition has been filed under Section 439 of the Code of Criminal Procedure, 1973, for grant of regular bail to the petitioner – Vishal Gupta, who has been booked for having committed the offence punishable under Sections 18/61/85 of the NDPS Act, 1985, in FIR No. 24, dated 24.01.2022, registered at Police Station Rama Mandi, District Jalandhar (Annexure P-1).

At the outset, learned State counsel has filed the custody certificate dated 13.09.2022 in Court today. Same is taken on record, subject to all just exceptions. Office to tag the same at appropriate place.

A copy thereof has been handed over to the counsel for the petitioner.

Learned counsel for the petitioner submits that petitioner is a young boy of 22 years of age, who has been falsely dragged in the present case. He further submits that recovery of opium from the possession of the petitioner is projected as 2.510 kg., whereas, 2.50 kg. Is the non-commercial quantity, under the NDPS Act.

Learned counsel for the petitioner further submits that the weight of 2.510 kg. of opium is found to be along with polythene and actual weight of the recovered contraband falls under commercial or non-commercial category, has not been ascertained by the prosecution. He further submits that petitioner is inside jail since 28.01.2022 and is not involved in any other criminal activity including that of any other case under the NDPS Act.

Learned counsel for the petitioner further submits that after completion of investigation challan has been submitted on 22.07.2022 and charges are yet to be framed. Therefore, in view of the fact that investigation is complete and conclusion of trial would take long time, no purpose would be served by keeping the petitioner inside jail for indefinite period. He further submits that there are fairly arguable points during the course of the trial showing the innocence of the petitioner. He further submits that further incarceration of the petitioner is not worth in this case.

Per contra, learned State counsel while opposing the submissions made by learned counsel for the petitioner submits that recovery in the present case is more than 2.50 kg., therefore, it falls under the commercial quantity and bar of Section 37 of NDPS Act would be strictly applicable in the case of the petitioner, therefore, he is not entitled for the concession of bail.

After hearing both the sides and perusing the record with their able assistance, I find that there is some substance in the contentions raised by the counsel for the petitioner and especially that weight of 2.510 kg. of Opium is found alongwith polythene, therefore, it would be a moot question before the Court below as to whether the recovered contraband falls within the parameters of commercial quantity or non-commercial quantity.

Moreover, petitioner not being involved in any other criminal activity including that under the NDPS Act and being a young boy of 22 years of age, coupled with the factum of quantity of recovery and the stage of investigation/trial, I am of the view that bar of Section 37 of the NDPS Act, cannot be applied in strict sense in the present case.

Accordingly, the present petition is allowed. The petitioner is ordered to be released on bail in this case, subject to his furnishing bail/surety bonds to the satisfaction of the learned trial Court/Chief Judicial Magistrate/Illaq Magistrate/Duty Magistrate concerned, if not required in any other case.

However, it is made clear that if petitioner is found to be directly involved in any other NDPS matter, then prosecution would be at liberty to seek cancellation of bail of the petitioner.

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

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 evidence available on record.

(SANJAY VASHISTH)
JUDGE

September 13, 2022

J.Ram

Whether speaking/reasoned: *Yes/No*
Whether Reportable: *Yes/No*