

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

CRM-M-19334-2022

Date of Decision:-13.05.2022

Anurag Shrivastav.

.....**Petitioner.**

Versus

State of Punjab.

.....**Respondent.**

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Ankur Jain, Advocate for the Petitioner.

Mr. Kirat Singh Sidhu, Deputy Advocate General, Punjab.

JASJIT SINGH BEDI, J. (ORAL)

The Prayer in this petition is for the grant of regular bail under Section 439 Cr.PC in case FIR No.200 dated 12.09.2021 under Sections 18 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station Goindwal Sahib, District Tarn Taran.

2. The brief facts of the case are that while the police was on patrolling duty, two young persons alighted from a three wheeler scooter with bags on their shoulders and on seeing the police party got perplexed, turned backward and started moving hurriedly. On the basis of suspicion both of them were apprehended, who disclosed their names as Sukhdev Singh son of Arjan Singh and the other one disclosed his name as Anurag Srivastav son of V.S. Srivastav (present petitioner). After completing the usual formalities their kit bags were searched and from the kit bag of

Sukhdev Singh 1Kg 350 grams of Opium was recovered. From the kit bag of Anurag Srivastav 1Kg 250 grams of Opium was recovered.

3. The Counsel for the petitioner contends that the recovery effected from him was 1Kg 250 grams of Opium which was a non commercial quantity and recovery from his co-accused could not be clubbed to his recovery to make the total recovery that of commercial quantity. He relies on the judgment of this Court in *Amit Dhanak Vs. State of Haryana CRM-M-33684-2020 Decided on 11.01.2021*, *Sukhdev Singh versus State of Punjab CRM-M-53872-2021 decided on 27.04.2021*, *Dinesh Singh Dadhwal Vs. State of Punjab CRM-M-23217-2012 Decided on 15.10.2012*, *Buta Singh @ Buti Vs. State of Punjab CRM-M-2349-2016 Decided on 26.02.2016*, *Avtar Singh Vs. Narcotic Control Bureau Unit, Chandigarh CRM-M-10230-2017 Decided on 26.04.2017*, *Vicky Kumar Vs. State of Punjab CRR -1785-2018 Decided on 13.08.2018*, *Daniya Vs. State of Punjab CRM-M-11428-2020 Decided on 19.05.2020*, *Gagandeep Singh @ Gagna Vs. State of Punjab CRM-M-43279-2020 Decided on 07.04.2021*, *Navdeep Kumar Vs. State of Punjab CRM-M-3105-2022 Decided on 01.02.2022* and *Harjit Singh @ Jeeta Vs. State of Punjab CRM-M-5415-2022 Decided on 15.02.2022* to contend that when there is separate recovery from each accused of non commercial quantity then the recovery from each accused cannot be clubbed together so as to disentitle all the accused to the grant of bail.

The Hon'ble Supreme Court in *Amarsingh Ramjibhai Barot Vs. State of Gujarat 2005 AIR (Supreme Court) 4248* held as under:-

“ A number of contentions were urged in the High Court by the appellant in support of his appeal. It was contended that the conviction was liable to be set aside as there was non-

compliance with the provisions of section 42(2), 50, 52 and 57 of the NDPS Act. There is no substance in this contention. The High Court, however, was of the view that the conviction of the appellant under section 17 and 18 read with section 29 of the NDPC Act was not correct. On the other hand, the High Court came to the conclusion that the appellant was liable to be convicted under Section 21(c) and also under Section 21(c) read with Section 29 of the Act, for individually being in possession of 920 grams and for being jointly, in conspiracy with the deceased, in possession of 4.250 kgs. of the prohibited substance recovered. In the view of the High Court, the total amount of prohibited substance recovered (personally from the appellant and also from the joint possession of the two accused) being more than “commercial quantity” as defined under the applicable notification, the appellant was liable to be visited with the minimum punishment of 10 years rigorous imprisonment plus fine of Rs. 1 lakh. The High Court was also of the view that, even if the quantity of 920 grams recovered from the appellant alone were to be considered, it would warrant conviction under Section 21(c) and the minimum sentence of 10 years rigorous imprisonment plus fine of Rs. 1 lakh. Being aggrieved thereby, the appellant is before this Court.

The learned counsel appearing for the appellant urged only one contention in support of the present appeal. He contended that the High Court fell into an error in taking the total quantity of the offending substances recovered from the two accused jointly and holding that the said quantity was more than the commercial quantity, warranting punishment under Section 21(c) of the NDPS Act. He contended that as far as the appellant is concerned, the High Court erred by assuming that there was criminal conspiracy within the meaning of Section 29 of the NDPS Act, and erroneously proceeded under the said section. The High Court fell into a further error of assuming that because Section 29 was

applicable, the total quantity of opium recovered was 920 grams plus 4.250 kgs. The counsel urged that because of this error the High Court took the wrong view that the total recovered opium was of “commercial quantity” and, therefore, attracted Section 21(c) of the NDPS Act.

Although, at first blush, the argument of the learned counsel appeared attractive, on careful appreciation of the facts on record we are satisfied that the High Court judgment is fully justified and needs to be upheld. It is true that the High Court proceeded on the footing that there was a criminal conspiracy between the appellant and the deceased, Danabhai Virabhai Rabari. In our view, however, there was no warrant for this conclusion at all as there is no evidence to suggest that there was any such abetment and/or criminal conspiracy within the meaning of Section 29 of the NDPS Act. The appellant and Danabhai Virabhai Rabari were found together, but individually carrying the recovered substances. Hence, it was not possible for the High Court to take the view that Section 29 was attracted. ”

4. The Counsel for the State on the other hand contends that the total quantity of the contraband recovered from both the accused is to be considered in order to adjudicate upon the bail application in which case the recovery was of a commercial quantity thereby attracting the bar of Section 37 of the NDPS Act.

5. I have heard counsel for both the parties at length.

6. A perusal of the orders/judgments referred to herein above would show that the total quantity recovered from both the accused are not to be seen collectively when individual recovery from each accused is of non commercial quantity.

7. In view of the above, since the recovery from the petitioner is of a non commercial quantity of Opium the rigors of Section 37 of the

NDPS Act are not applicable to the case of the petitioner.

8. The petitioner is in custody since 12.09.2021 and the investigation stands completed. Therefore, the further incarceration of the petitioner is not required, moreso when the trial is not likely to be concluded in the near future.

9. In view of the above, the present petition is allowed and the petitioner-**Anurag Shrivastav** son of Sh. Vijay Shankar Shrivastav is ordered to be released on bail subject to his furnishing bail bonds and surety bonds to the satisfaction of learned CJM/Duty Magistrate, concerned.

10. The petitioner shall appear before the police station concerned on the first Monday of every month till the conclusion of the trial and shall furnish an affidavit each time that he is not involved in any other crime other than the present case during the time he was on bail.

Petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

May 13, 2022

Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>