

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

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CRM-M-36888-2021

Date of Decision: 05.01.2022

Shubham Mehra @ Shubham

....Petitioner.

Versus

State of Punjab

....Respondent.

CORAM: HON'BLE MR. JUSTICE LALIT BATRA

Present: Mr. Dilpreet Singh Gandhi, Advocate for petitioner.

Mr. Mehardeep Singh, Additional Advocate General, Punjab.

Lalit Batra, J.(Oral)

Case has been taken up for hearing through Video Conferencing.

This petition under Section 439 Cr.P.C has been moved for grant of regular bail to petitioner-**Shubham Mehra @ Shubham** in case FIR No.100 dated 18.05.2021 under Sections 21, 29 and 61 of NDPS Act, registered at Police Station Civil Lines Batala, District Batala.

Learned counsel for the petitioner *inter alia* contends that version, as alleged in the FIR, is totally concocted one and there is no iota of truth therein. He further submits that allegedly contraband (Heroin) weighing 260 grams was recovered from conscious possession of petitioner as well as co-accused Harmeet Singh @ Gaurav, who were travelling by car make Swift bearing No.PB02-DN-9004. He further urges that in view of disclosure statements of petitioner and co-accused Harmeet Singh @ Gaurav, recovery of contraband (Heroin) weighing 256 grams was effected from co-accused namely Sukhwinder Singh @ Sonu and Abhimanu Gupta

@ Manu. He further urges that allegedly during personal search of petitioner as well as co-accused, as detailed above, contraband of different quantities were 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 in terms of para No.11 of reply dated 07.12.2021 filed by respondent-State, coupled with contents of FIR reveals that contraband allegedly recovered from petitioner as well as co-accused Harmeet Singh @ Gaurav was weighed inclusive of polythene envelope and the weight thereof came to 260 grams. He further urges that weight of polythene envelope may vary from 5 to 10 grams and in that eventuality actual weight of contraband shown to be 260 grams may vary and as such alleged recovery of contraband would be less than 250 grams, which is '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 (viiia) 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 (viiia) 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 18.05.2021 and he is no more required by the Police for any

investigation purpose as after completion of investigation, final report under Section 173 Cr.P.C. (*Challan*) has already 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.

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 in custody since 18.05.2021; that petitioner is no more required by the Investigating Agency for investigation purpose; that *Challan* has already 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-**Shubham Mehra @ Shubham** is allowed and he is ordered to be released on bail on his furnishing personal/surety bonds to the satisfaction of Trial Court/ Chief Judicial Magistrate/Duty Magistrate, Gurdaspur, as the case may be.

(LALIT BATRA)
JUDGE

05.01.2022
d.gulati

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