

**In The High Court for the States of Punjab and Haryana
At Chandigarh**

CRM-M-42755-2021 (O&M)
Date of Decision:- 5.5.2022

Deepak Kumar @ Billa

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Chandan Singh Rana, Advocate, for the petitioner.

Mr. Luvinder Sofat, AAG, Punjab,
assisted by ASI Jagtar Singh.

GURVINDER SINGH GILL, J. (Oral)

1. The petitioner has approached this Court seeking grant of regular bail in respect of a case registered against him vide FIR No.09, dated 8.1.2021, Police Station STF, Phase IV, Mohali/SAS Nagar, under Sections 21 and 29 of NDPS Act.
2. The FIR was lodged on the basis of receipt of secret information to the effect that the petitioner alongwith Gaurav and Nityanand indulged in sale of 'Heroin'. Pursuant to receipt of said information all the aforesaid three three persons were arrested. While Nityanand was found in possession of 430 grams of 'Heroin', Gaurav and petitioner-Deepak Kumar were found in possession of 10 grams of 'Heroin' each.

3. Learned counsel for the petitioner has submitted that he has falsely been implicated in the present case and that in any case he was found in possession of non-commercial quantity of contraband i.e. 10 grams of 'Heroin' and that he cannot be attributed conscious possession of the contraband recovered from the co-accused.
4. On the other hand, learned State counsel has submitted that since all the three persons are specifically named in the FIR and it is alleged that they indulged in sale of 'Heroin' and infact were arrested together from the same place and each of them was found in possession of some quantity of contraband, therefore, the petitioner can safely be attributed conscious possession in respect of the contraband recovered from the co-accused and that in case the entire quantity recovered from all the three co-accused is taken into account it would fall in the category of 'commercial quantity'. Learned State counsel has further informed that the petitioner as on date has been behind bars since the last about 1 year and 4 months and that challan already stands presented and also that the petitioner stands involved in two other cases registered for offence under Section 379 IPC. It has also been informed that as on date none out of the cited 13 PWs has been examined.
5. I have considered rival submissions addressed before this Court.
6. It is no doubt correct that the prosecution specifically alleges that the petitioner was found in possession of 10 grams of 'Heroin' while other co-accused i.e. Gaurav was also found in possession of 10 grams of 'Heroin' and Nityanand was found in possession of 430

grams of ‘Heroin’. It will be debatable as to whether the petitioner can be said to be in conscious possession of the contraband recovered from co-accused. In any case, the petitioner has been behind bars for a substantial period of 1 year and 4 months and trial has not even commenced inasmuch as none out of the cited 13 PWs has been examined till date. Identically situated co-accused of the petitioner namely Gaurav has already been granted bail. In these circumstances the petitioner also deserves the same concession. The petition, as such, is accepted and the petitioner is ordered to be released on bail subject to his furnishing bail bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

5.5.2022
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(GURVINDER SINGH GILL)
JUDGE

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