

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

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CRM-M-39362-2022

Date of Decision : **September 06, 2022**

SUKHWINDER SINGH

.....Petitioner

VERSUS

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present : Mr. Amit Gupta, Advocate for
Mr. Vipin Mahajan, Advocate
for the petitioner.

Mr. Kunal Vinayak, AAG, Punjab.

JASGURPREET SINGH PURI. J. (Oral)

The present petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No.103 dated 4.8.2022 under Sections 21-B, 27-A, 29 of NDPS Act, 1985, registered at Police Station Dhariwal, District Gurdaspur.

It has been submitted by the learned counsel for the petitioner that the petitioner is in custody for the last one month. He submitted that the petitioner has been falsely implicated in the present case which is apparent from the bare perusal of the FIR itself. He submitted that as per the allegation, the police party conducted the raid whereby the brother of the petitioner, namely, Gurpreet Singh was arrested alongwith 6 grams of Heroin and some other articles including the mobile phone and some currency notes and electric items. He further submitted that so far as the present petitioner is concerned, he has been falsely implicated under Section 27-A NDPS Act on the ground that he

has been harbouring the other co-accused and recovery of Rs.43000/- approximately from the bed of the petitioner was made and the only allegation against the petitioner is that the currency which was recovered from the petitioner which was drug money. He submitted that so far as the present petitioner is concerned, he is the brother of the co-accused and, therefore, the provisions of Section 27-A NDPS Act would not apply in the present case just because they are living jointly in one house and it was only in order to implicate the present petitioner that his name has been nominated in the present case falsely by the police. He further submitted that the petitioner is not involved in any other case and has clean antecedents and rather he is doing the work of electrical mechanic and his wife is doing the work of tailoring and the amount of Rs.43,000/- which was found in the bed cannot raise any presumption that it was a drug money since it was a hard-earned money of the petitioner. He submitted that the petitioner is a patient of diabetes of type-I and for that he has to take 30 units of insulin per day as per medical certificate Annexure P-2. He further submitted that since on the face of it Section 27-A NDPS Act does not apply to the petitioner, consequently the bar contained under Section 37 NDPS Act will also not apply in the present case. He submitted that there was an alleged recovery of only 6 grams of Heroin from the co-accused and it does not fall in the category of commercial quantity and it was only in order to implicate the petitioner and the co-accused for creating a bar under Section 37 NDPS that the provision of Section 27-A NDPS Act was added.

On the other hand, the learned State counsel has submitted

that it is correct that the petitioner is in custody for about one month and so far as the role of the present petitioner is concerned, there was a recovery of Rs.43,000/- from the bed of the petitioner who is the brother of the other co-accused from whom 6 grams of Heroin was recovered. He submitted that it is also correct that the petitioner is not involved in any other case. The learned State counsel has also filed the custody certificate which is taken on record.

I have heard the learned counsels for the parties.

The petitioner has suffered incarceration for about one month. Even as per the FIR and the prosecution story the recovery of contraband i.e. 6 grams of Heroin does not fall in the category of commercial quantity and it was from his brother and so far as the role assigned to the petitioner was that there was a recovery of about Rs.43,000/- from his bed that is why Section 27-A of NDPS Act was added. An argument was raised by the learned counsel for the petitioner that Section 27-A of NDPS Act was added only in order to attract Section 37 of the Act, otherwise there was no meaning to add Section 27-A of NDPS Act. The arguments addressed by the learned counsel for the petitioner does carry weight. Since the petitioner and the other co-accused are stated to be brothers, this Court is of the prima facie view at this stage atleast that there are reasons to believe that the petitioner is not guilty of the offence and since the petitioner is not involved in any other case nor it is the argument raised by the learned State counsel that in case the petitioner is released on bail then he may repeat the offence or may abscond from justice, the bar contained under Section 37 of NDPS Act

will not apply even though Section 27-A of NDPS Act was added.

In view of the aforesaid position, the present petition is allowed. The petitioner is ordered to be released on bail on furnishing of bail bonds and surety bonds to the satisfaction of concerned Chief Judicial Magistrate/trial Court/Duty Magistrate.

However, anything observed here-in-above shall have no effect on the merits of the case and is meant for deciding the present petition only.

September 06, 2022
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(JASGURPREET SINGH PURI)
JUDGE

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