

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

**CRM-M No.41313 of 2022 (O&M)
Date of decision : 14.09.2022**

Kamal Kumar

..... Petitioner

versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. Keshav Pratap Singh, Advocate
for the petitioner.

Mr. Sumit Jain, Addl.AG, Haryana.

PANKAJ JAIN, J. (ORAL)

This petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case F.I.R. No.234 dated 06.07.2022 registered under Sections 21(b) of NSPS Act, 1985 (Section 27-A of NDPS Act, 1985 added later on) at Police Station City Ratia, District Fatehabad.

Custody certificate dated 13.09.2022 has been filed today in Court. The same is taken on record. As per the custody certificate, the petitioner has undergone actual custody of 02 months and 07 days.

Learned counsel for the petitioner contends that the alleged recovery from the petitioner is 5.77 grams of heroin. The petitioner is in custody since 06.07.2022. He is already suffered incarceration for more than 02 months and 07 days, quantity involved is marginally higher than the small quantity as per the Act. Learned counsel thus, submits that rigours of Section 37 of the Act would not be attracted and there won't be any such bar in granting bail to the petitioner.

Learned State counsel on instructions from ASI Krishan Kumar on strength submits that petitioner is a habitual offender and there is another FIR pending under NDPS Act.

In response thereto, learned counsel for the petitioner submits that the petitioner is on bail in the other NDPS case pending against him. No recovery from the petitioner was made and he was merely nominated on the basis of disclosure statement made by the co-accused and more-over in that case also the recovery was of 15 grams of heroin i.e. less than the commercial quantity.

I have heard learned counsel for the parties and have gone through the records.

Keeping in view that the petitioner has already suffered incarceration for more than 02 months and 7 days, the fact that rigours of Section 37 of the Act will not be attracted as the quantity of the contraband is marginally higher than the small quantity, the present petition is allowed. The petitioner is ordered to be released on bail, if not required in any other case, on his furnishing bail/surety bonds subject to the satisfaction of the Ld. Trial Court/Duty Magistrate, concerned.

Needless to say that anything observed herein shall not be construed to be an opinion on the merits of the case.

14th September, 2022

Shivani Kaushik

Whether speaking/reasoned
Whether Reportable :

[PANKAJ JAIN]

JUDGE

Yes
No