

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

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**CRM-M-42362-2022
Decided on : 20.09.2022**

Gurpreet Singh

... Petitioner(s)

Versus

State of Punjab

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Rishu Mahajan, Advocate
for the petitioner.

Mr. J. S. Arora, DAG, Punjab.

SANJAY VASHISTH, J. (Oral)

The instant petition has been filed under Section 439 of the Code of Criminal Procedure, 1973, for grant of regular bail to the petitioner – Gurpreet Singh, who has been booked for having committed the offences punishable under Sections 21/29/61 of NDPS Act, 1985, in FIR No.84, dated 01.07.2022, registered at Police Station Sadar Ahmedgarh, District Malerkotla.

At the outset, learned State counsel has filed the custody certificate dated 19.09.2022 in Court today. Same is taken on record, subject to all just exceptions. Office to tag the same at appropriate place.

A copy thereof has been handed over to the counsel for the petitioner.

Learned counsel for the petitioner submits that petitioner is young boy of 27 years of age and has been falsely implicated in the present case by showing recovery of 250 grams of chitta/heroin which is non-commercial quantity. Learned counsel for the petitioner submits that in the absence of commercial quantity, applicability of Section 37 of NDPS Act would be moot question before learned trial Court at the time of its decision.

He further submits that alleged recovery was also effected from the envelope

lying over the thighs of co- passenger of the alleged vehicle which was driven by the petitioner. Therefore, question of conscious possession would also arise in the present matter.

He further submits that learned Court below has failed in considering the totality of circumstances and no weightage has been given to the fact that petitioner is not involved in any other case including under the NDPS Act. He further submits that there are fairly arguable points during the course of the trial showing the innocence of the petitioner. Learned counsel for the petitioner further submits that long incarceration of the petitioner inside jail along with other hard core criminals may affect his future adversely.

Per contra, learned State counsel while opposing the submissions made by learned counsel for the petitioner submits that offence under the NDPS Act, is serious offence. Even though the quantity of contraband falls under non-commercial category, but bar of Section 37 of NDPS Act would still be applicable in the case of the petitioner, therefore he is not entitled for the concession of bail.

After considering the submissions of both the sides, and perusing the material available on record with their able assistance, and in the totality of the circumstances, I find that there is some substance in the contentions raised by the counsel for the petitioner. Petitioner is aged about 27 years, and no other case has ever been registered against him except the present one. Moreover, quantity recovered from his possession, is non-commercial quantity and he is already inside jail since 01.07.2022.

Accordingly, the present petition is allowed. Petitioner is ordered to be released on bail in this case, subject to his furnishing bail/surety bonds to the satisfaction of the learned Trial Court/ Chief Judicial

Magistrate/ Illaqa Magistrate/ Duty Magistrate concerned, if not required in any other case.

It is made clear that the petitioner shall not extend any threat and shall not influence any prosecution witnesses in any manner directly or indirectly.

The observation made here-in-above shall not be construed as an expression on the merits of the case and the Trial Court shall decide the case on the basis of evidence available on record.

However, it is made clear that in future if the petitioner is found involved in any case of similar nature, the respondent-State would be at liberty to take necessary steps for cancellation of bail granted to the petitioner in present case.

(SANJAY VASHISTH)
JUDGE

September 20, 2022

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