

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

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CRM-M-43798-2020(O&M)

Date of Decision: 28.02.2022

Jeewan Singh @ Jeena

....Petitioner.

Versus

State of Punjab

....Respondent.

CORAM: HON'BLE MR. JUSTICE LALIT BATRA

Present: Ms. R.K. Grewal, Advocate for petitioner.

Mr. Hittan Nehra, Additional Advocate General, Punjab.

Lalit Batra, J.(Oral)

Case has been taken up for hearing through Video Conferencing.

This second petition under Section 439 Cr.P.C has been moved for grant of regular bail to petitioner- **Jeewan Singh @ Jeena** in case FIR No.40 dated 25.06.2018 under Sections 21, 22, 25 and 29 of NDPS Act, registered at Police Station D- Division, District Police Commissionerate Amritsar.

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. She further submits that allegedly contraband (Heroin) weighing 255 grams was recovered from the conscious possession of petitioner, whereas allegedly 260 grams (Heroin) was recovered from co-accused Nishat Kumar @ Robin. She further urges that allegedly during personal search of petitioner as well as co-accused, as detailed above, contraband of different quantities were recovered. She 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. She further urges that there is change in scenario in the manner that in terms of reply dated 05.01.2022, especially para No.4, filed by respondent-State coupled with contents of FIR, contraband allegedly recovered from petitioner was weighed inclusive of polythene envelope of which weight came to be 255 grams. She 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 255 grams may vary and as such alleged recovery of contraband would be less than 250 grams, which is 'non-commercial quantity'. She 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. She further urges that sub-clause (viia) 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. She further urges that in terms of Serial No.56 of the Table attached to the NDPS Act when read in consonance with sub-clause (viia) 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 “noncommercial quantity”. She further submits that co-accused namely Nishat Kumar @ Robin has already been granted bail by this Court, vide order dated 29.06.2021 passed in CRM-M-20118-2021. She further submits that petitioner is languishing in custody since 30.06.2018 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.

She 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 30.06.2018; that petitioner is no more required by the Investigating Agency for investigation purpose; that co-accused namely Nishat Kumar @ Robin has already been granted bail by this Court, vide order dated 29.06.2021 passed in CRM-M-20118-2021; 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- **Jeewan Singh @ Jeena** 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, Amritsar, as the case may be.

(LALIT BATRA)
JUDGE

28.02.2022
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