

211

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-957-2023

Date of Decision: 22.08.2023

Kuldeep Singh @ Keepa

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Amit Chaudhary, Advocate,
for the petitioner.

Mr. Naveen Kumar Sheoran, DAG, Haryana.

JASGURPREET SINGH PURI, J. (ORAL)

1. 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 bearing FIR No.40 dated 06.02.2022, under Section 22(C), 61/85 of the NDPS Act, registered at Police Station Sadar Tohana, District Fatehabad.

2. It has been submitted by learned counsel for the petitioner that the petitioner is in custody for about 1½ years and it is a case where the allegations were that the petitioner was present in the car along with the other co-accused and there was an alleged recovery of 410 grams of *Heroin* from the hand rest box parallel to driver seat of the car. He further submitted that the other co-accused, namely, Rajdeep Singh @ Sonu, Rajjo Bai @ Raj Kaur and Rinku have already been extended the benefit of regular bail by this Court on 10.08.2023 in CRM-M-19903-2022, CRM-M-26896-2023 and CRM-M-35940-2023, respectively. He also submitted that although the

petitioner is involved in three more cases but it is a case where there was an *ex facie* violation of Section 50 of the NDPS Act and all those co-accused as aforesaid have been extended the benefit of regular bail since there was *prima facie* violation of Section 50 of the NDPS Act. He further submitted that even a perusal of the FIR would show that an offer was made to get the accused searched in the presence of a gazetted officer or a Magistrate and thereafter, they chose to be searched in the presence of a Magistrate which is evident from the FIR itself. However, instead of getting their search conducted in the presence of a Magistrate as per their wish and as per the provision of Section 50 of the NDPS Act, an officer was called who was not a Magistrate but was only a Gazetted Officer. Learned counsel for the petitioner further submitted that the provision and the spirit of Section 50 of the NDPS Act has been defeated in the present case, therefore, the recovery gets vitiated. He submitted that in view of the aforesaid position when there is an apparent violation of Section 50 of the NDPS Act, the bar contained under Section 37 of the NDPS Act will not apply in the present case and therefore, the petitioner may also be considered for the grant of regular bail.

3. On the other hand, Mr. Naveen Kumar Sheoran, learned DAG, Haryana, submitted that so far as the custody of the petitioner is concerned, the same is correct and it is also correct that aforesaid three co-accused have been granted the benefit of regular bail by this Court and one of the grounds for grant of bail was that there was a violation of Section 50 of the NDPS Act. He has however opposed the grant of bail to the petitioner on the ground that he is involved in three more cases and also on the ground that in the present case recovered quantity from the hand rest box parallel to driver

seat of the car is 410 grams of *Heroin* which falls in the category of commercial quantity and therefore, the prayer of the petitioner is hit by the bar contained under Section 37 of the NDPS Act.

4. I have heard the learned counsels for the parties.

5. The petitioner has already faced incarceration for 1½ years. For the purpose of considering the grant of regular bail to the petitioner, it has to be considered in the light of Section 37 of the NDPS Act since the recovered quantity from the hand rest box parallel to driver seat of the car is 410 grams of *Heroin* which falls in the category of commercial quantity under the NDPS Act. The other three co-accused have already been enlarged on regular bail by this Court vide aforesaid order dated 10.08.2023, primarily on the ground that there was apparently violation of Section 50 of the NDPS Act. So far as the aforesaid issue is concerned, the petitioner is at parity with the aforesaid co-accused. The mere fact that the petitioner is involved in three more cases cannot rectify the defect if any in the present case. This Court is of the *prima facie* view that considering the aforesaid factual position where apparently the provision of Section 50 of the NDPS Act has been violated, there are *prima facie* reasons to believe at least at this stage that the petitioner is not guilty of an offence.

6. In view of the aforesaid position and also considering the parity as aforesaid, this Court deems it fit and proper to grant regular bail to the petitioner. Consequently, the present petition is allowed and the petitioner is ordered to be released on regular bail on furnishing bail bond/surety bond to the satisfaction of the trial Court/Duty Magistrate concerned, if not required in any other case.

7. However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is only meant for the purpose of decision of present petition.

(JASGURPREET SINGH PURI)

Bhumika

JUDGE

1. Whether speaking/reasoned: Yes/No
2. Whether reportable: Yes/No