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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-3556-2023

Decided on: 17.02.2023

Shah Nawaz @ Shanu

.... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Deepak Malhotra, Advocate
for the petitioner.

Ms. Lavanya Paul, DAG, Punjab.

JASGURPREET SINGH PURI, J. (ORAL)

The present is the third petition filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No.130 dated 06.07.2021, under Sections 21/22/61/85 of the NDPS Act, registered at Police Station City Hoshiarpur, District Hoshiarpur.

It has been submitted by learned counsel for the petitioner that the petitioner is in custody for about 10 months and the charges have already been framed by the learned Special Judge. He further submitted that as per the prosecution story, the petitioner along with other co-accused, namely, Om Parkash @ Omi were apprehended and there were alleged recovery of 195 grams of *Heroin* qua the aforesaid co-accused and recovery of 225 grams of *Heroin* from the petitioner. He also submitted that even the charges have been framed qua the aforesaid recovery from the petitioner. He further submitted that be that as it may, the aforesaid co-accused, namely, Om Parkash @ Omi

has already been extended the benefit of regular bail by this Court in CRM-M-56705-2022 on 10.01.2023 vide Annexure P-8. He also submitted that the alleged recovery from the petitioner does not fall in the category of commercial quantity under the NDPS Act and he has already suffered incarceration for about 10 months, and therefore, he may be considered for the grant of regular bail.

On the other hand, Ms. Lavanya Paul, DAG, Punjab, has submitted that it is correct that the petitioner is in custody for about 10 months and the charges have been framed in the present case and qua the present petitioner, there was a recovery of 225 grams of *Heroin*, which does not fall in the commercial quantity under the NDPS Act. She has however opposed the grant of regular bail to the petitioner on the ground that the petitioner is involved in one more case under the NDPS Act pertaining to 10 grams of *Heroin*.

I have heard the learned counsel for the parties.

The petitioner has already suffered incarceration for about 10 months. The alleged recovery from the petitioner does not fall in the category of commercial quantity under the NDPS Act, therefore, the rigor of Section 37 of the NDPS Act will not apply in the present case. The mere fact that the petitioner is involved in one more case under the NDPS Act pertaining to 10 grams of *Heroin*, would not become a bar for grant of bail to the petitioner in the facts and circumstances of the present case. Apart from the above, the other co-accused, namely, Om Parkash @ Omi, who is at parity with the petitioner, has already been granted regular bail by this Court vide Annexure P-8. Furthermore, it is neither the case of the State nor it has been so pleaded by the learned State counsel that in case the petitioner is released on bail, then he may repeat the offence or may abscond or flee from justice.

In view of the aforesaid facts and circumstances of the case, this Court deems 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.

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.

17.02.2023*Bhumika***(JASGURPREET SINGH PURI)
JUDGE**

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