

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

**CRM-M-11793-2023
Date of Decision: 15.03.2023**

SONU KUMAR

... PETITIONER

V/S

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. Manoj R. Sharma, Advocate for the petitioner.

Mr. M.S.Nagra, AAG Punjab.

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VIVEK PURI, J. (ORAL)

The petitioner is seeking regular bail in case bearing FIR No. 12 dated 30.01.2023 under Sections 21(b), 27(a), 29 of Narcotic Drugs and Psychotropic Substances Act, registered at Police Station Sadar Gurdaspur, District Gurdaspur.

Custody certificate has been taken on record.

Briefly, as per the allegations of prosecution, on 30.01.2023 two polythene bags were recovered from the car in which the petitioner was travelling and the same contained heroin which weighed 20 gms. Besides, a sum of Rs. 5040/- has also been recovered from the petitioner.

Learned counsel for the petitioner contends that the quantity of contraband recovered from the possession of the petitioner falls in the category of less than commercial quantity. The petitioner is in custody for a period of 1 month and 11 days. Though, he is involved in another case under NDPS Act but in that case he was arraigned as an accused on the

basis of the disclosure statement of the co-accused. Moreover, in other case bearing FIR No. 117 dated 28.05.2022 under Sections 21-b/27-A/29 of Narcotic Drugs and Psychotropic Substances Act, 25 of Arms Act registered at Police Station City Gurdaspur, the petitioner has been granted regular bail by the Co-ordinate Bench of this Court in terms of the order dated 07.09.2022 passed in CRM-M-37603-2022. The provisions of Section 27A of NDPS Act are not attracted in the instant case.

Learned State counsel has opposed the bail application on the score that the petitioner is involved in another case under NDPS Act and the matter is still at the stage of investigation.

It is significant to note that the quantity of contraband allegedly recovered in the instant case falls in the category of less than commercial quantity. The learned Special Court has declined bail to the petitioner primarily on the ground that Section 37 of NDPS Act creates a bar for the release of the accused for the offence punishable under Section 27A of NDPS Act. In the instant case, except the recovery of Rs.5040/-, there is nothing on record to indicate that the petitioner had been financing the illicit traffic either directly or indirectly or harbouring any person engaged in the activities pertaining to the narcotic substance. Consequently, it will be a debatable point as to whether the offence under Section 27A of NDPS Act is also attracted merely on the score of recovery of Rs.5040/- from the possession of the petitioner. In such circumstances, the stringent provisions of Section 37 of the NDPS Act do not come into play. The custodial interrogation of the petitioner is over and recovery has been effected. The

conclusion of investigation and trial is likely to take some time and no fruitful purpose would be served by detaining the petitioner in further custody.

As such, sufficient mitigating circumstances are made out to extend the concession of bail to the petitioner. Therefore, without making any expression of opinion on the merits of the case, it is ordered that the petitioner be released on regular bail subject to his furnishing fresh bail bonds/surety bonds to the satisfaction of the concerned trial Court/Chief Judicial Magistrate/Duty Magistrate.

The petition is allowed.

15.03.2023

Janki

**(VIVEK PURI)
JUDGE***Whether speaking/reasoned : Yes/No**Whether reportable : Yes/No*