

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

CRM-M-10416-2023

Date of Decision:-03.03.2023

Raju.

.....**Petitioner.**

Versus

State of Punjab.

.....**Respondents.**

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Rhythem Bajaj, Advocate for the Petitioner.

Mr. Aman Dhir, Deputy Advocate General, Punjab.

JASJIT SINGH BEDI, J. (ORAL)

The Prayer in this petition under Section 439 Cr.PC is for the grant of regular bail in case FIR No.84 dated 16.07.2022 under Section 21 of Narcotic Drugs and Psychotropic Substances Act, 1985 (Offence under Section 29 of the NDPS Act Added later on) registered at Police Station Sadar Cantt. Ferozepur, District Ferozepur.

The brief facts of the case are that while the police party was on patrolling duty a Tempo (*Chhota Hathi*) bearing registration No.PB-04AD-8840 in which two persons were sitting was signalled to stop for checking. The driver of the tempo attempted to turn around but on suspicion the tempo was stopped and the persons sitting therein were asked their names and addresses. The driver disclosed his name as Raju (petitioner) son of Roop Singh and the person who was sitting on the cleaner side disclosed his name

as Jagjit Ram (since granted bail vide order dated 12.01.2023 in CRM-M-154-2023). On checking the dashboard of the *chhota haathi* (tempo) 265 grams of heroin contained in a plastic envelope came to be recovered.

The Counsel for the petitioner contends that the no recovery has been effected from his conscious possession as the recovery has been purportedly effected from the dashboard. Even otherwise, the recovery was of 265 grams of heroin which was marginally above the commercial quantity of 250 grams. Since the petitioner was in custody since 16.7.2022 and only 01 prosecution witness out of 14 PWs had been examined so far, the further incarceration of the petitioner was not required and he was entitled to the grant of bail, moreso when co-accused Jagjit Ram has been granted bail vide order dated 12.01.2023 in CRM-M-154-2023.

The Counsel for the State on the other hand contends that commercial quantity of the contraband has been recovered from the vehicle. Therefore, it cannot be argued that the petitioner was not in conscious possession. He however, does not dispute the fact that the petitioner is a first time offender, only 01 witness out of 14 cited prosecution witnesses has been examined and that the recovery is marginally above the commercial quantity.

I have heard learned Counsel for both the parties at length.

This Court in case of ***Ranjit Singh @ Ranjit Kumar Vs. State of Punjab CRM-M-57485-2022 Decided on 10.01.2023*** has held that where recovery from the petitioner is of quantity marginally above the commercial quantity then the case of the accused can be considered for the grant of bail. In the present case the recovery is not from the person of the petitioner but from the dashboard of the vehicle. Therefore, it would be a matter of

adjudication during trial as to whether the petitioner could be said to be in conscious possession of the same. The petitioner is in custody since 16.7.2022 and only 01 out of the 14 cited witnesses in the list of prosecution have been examined. As the recovery is marginally above the commercial quantity, the case of the petitioner can be considered for the grant of bail more so when his co-accused Jagjit Singh has been granted bail vide order dated 12.01.2023 in CRM-M-154-2023.

Thus, without commenting on the merits of the case, the petitioner-**Raju** son of Sh. Roop Singh is ordered to be released on bail subject to the satisfaction of learned CJM/Duty Magistrate, concerned.

The petitioner shall appear before the police station concerned on the first Monday of every month till the conclusion of the trial and inform in writing that he is not involved in any other crime other than the present case.

In addition, the petitioner (or any one on his behalf) shall prepare a FDR in the sum of Rs.1,00,000/- and deposit the same with the Trial Court. The same would be liable to be forfeited as per law in case of the absence of the petitioner from trial without sufficient cause.

Petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

March 03, 2023
Vinay

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No