

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

CRM-M-18055-2023

Date of Decision:-20.07.2023

Vishal.

.....Petitioner.

Vs.

U.T., Chandigarh.

.....Respondent.

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

Present:- Mr. Rahil Mahajan, Advocate for the Petitioner.

Mr. Rajiv Vij, Addl. P.P. U.T., Chandigarh.

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.73 dated 17.11.2022 under Sections 21 NDPS Act registered at Police Station Sarangpur, Chandigarh.

2. The brief facts of the case are that while the police party had set up a check post on the road towards village Dhanas, a young boy was seen walking on the road. On seeing the police check post he got scared, turned back and started walking fast. On suspicion he was apprehended and from the envelope in his possession, the recovery of 260 grams of Heroin came to be effected.

3. The Counsel for the petitioner contends that he has been falsely implicated in the present case. There is violation of the mandatory provisions of the NDPS Act including Sections 42 and 50. However, taking the prosecution case to be true, as the recovery from the petitioner was of 260 grams of Heroin, which was marginally above the commercial quantity of 250 grams, he was entitled to the concession of bail as he was a first time

offender, in custody since 17.11.2022 and only 01 out of 17 prosecution witnesses had been examined so far. Even otherwise, the petitioner had disability of 75% in his eye sight which fact additionally entitled him to the grant of bail.

4. The Counsel for the State on the other hand contends that commercial quantity of contraband has been recovered from the petitioner and, therefore, in view of the Bar contained under Section 37 of the NDPS Act, the petitioner was not entitled to the grant of bail. He however, concedes that the petitioner is a first time offender, in custody since 17.11.2022 and only 01 out of 17 prosecution witnesses had been examined so far.

5. I have heard learned Counsel for the parties.

6. In the cases of '*Sukhchain Singh @ Manga Versus State of Punjab, CRM-M-7857-2022 decided on 04.04.2022, Pardeep Singh versus State of Punjab, CRM-M-46244-2022 decided on 19.01.2023, Hari Yadav @ Haiya versus State of Punjab (CRM-M-37645-2021) decided on 11.11.2022, Jang Kanwar Versus State of Punjab (CRM-M-53415-2021) decided on 19.01.2022, Shankar Prashad Chanau Versus The State of Punjab, CRM-M-24090-2020, decided on 27.08.2020, Gurpreet Kumar Versus State of Punjab, CRM-M-17021-2021, decided on 31.08.2021, Salim Versus State of Haryana, CRM-M-42436-2020, decided on 24.02.2021, Gagandeep Versus State of Punjab, CRM-M-3055-2021, decided on 27.01.2021, Gurpreet Singh @ Gopi Versus State of Punjab, CRM-M-41039-2019, decided on 26.02.2020, Dalbara Singh Versus State of Punjab, CRM-M-47880-2022 decided on 16.01.2023, and Vivek Watts versus State of Punjab, CRM-M-13791-2022 decided on 15.02.2023*, where the recovery from the accused was marginally above the commercial

quantity for the respective contraband in each case, the Court granted bail to the accused therein.

7. In the present case, the alleged recovery from the petitioner is of 260 grams of heroin, which is marginally above the commercial quantity of 250 grams. In this situation, the provisions of Section 37 of the NDPS Act can be relaxed to an extent and the case of the petitioner can be considered for the grant of bail, moreso, as he is a first-time offender, in custody since 17.11.2022, and only 01 out 17 prosecution witnesses has been examined so far.

8. Thus, without commenting upon the merits of the case, the present petition is allowed and the petitioner-**Vishal** son of Sh. Amar Singh is ordered to be released on bail to the satisfaction of the Trial Court/Duty Magistrate concerned.

9. The petitioner shall appear on the first Monday of every month before the police station concerned till the conclusion of the trial and furnish an affidavit each time that he is not involved in any other case other than the present case.

10. In addition, the petitioner (or someone on his behalf) shall prepare an 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.

11. The petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

July 20, 2023
Vinay

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