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(227)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-18555-2023
Date of Decision: 17.08.2023

SAJAN

... Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. O.P. Kamboj, Advocate
for the petitioner.

Ms. Ramta K Choudhary, DAG, Punjab.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 439 Cr.P.C. is for the grant of regular bail in case bearing FIR No.153 dated 16.09.2022 registered under Section 21 of the NDPS Act (Section 29 of the NDPS Act was added later on) at Police Station Mallanwala, District Ferozepur.

2. The brief facts of the case are that while the police party was on patrolling duty, information was received that Sajan (petitioner) son of Pargat was habitual of selling heroin and was coming from Makhu side on a motorcycle. If a *Naka* was set up, he could be apprehended red-handed with heroin.

Based on the said information, the FIR came to be registered and the petitioner was arrested. The recovery of 265 grams of heroin came to be effected from him.

Based on his disclosure statement one Seepu was nominated under Section 29 of the NDPS Act vide Rapat No.16 dated 18.09.2022.

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3. The learned counsel for the petitioner contends that the petitioner and his co-accused have been falsely implicated in the present case. The petitioner has been in custody since 16.09.2022 and none of the 11 prosecution witnesses have been examined so far. Therefore, the trial of the present case was not likely to be concluded anytime soon. Even otherwise, as the recovery from the petitioner was marginally above the commercial quantity of 250 grams of heroin, the petitioner was entitled to the grant of bail.

4. On the other hand, the learned State counsel contends that the commercial quantity of contraband has been recovered from the petitioner and his co-accused. Therefore, he was not entitled to the concession of bail in view of the bar contained under Section 37 of the NDPS Act. She, however, concedes that the petitioner is a first time offender, in custody since 16.09.2022 and none of the 11 prosecution witnesses had been examined so far.

5. I have heard the 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,

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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 265 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, when he is in custody since 16.09.2022, none of the 11 prosecution witnesses have been examined so far.

8. Thus, without commenting upon the merits of the case, the present petition is allowed and the petitioner, namely, Sajan son of Pargat 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

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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

17.08.2023

JITESH

Whether speaking/reasoned:- Yes/No
Whether reportable:- Yes/No