

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-24793-2023
Date of Decision:-19.05.2023

PRIYESH PANDEY ... Petitioner
Versus
STATE OF PUNJAB ... Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present:- Mr. Chandan Singh Rana, Advocate
for the petitioner.

Mr. Sanish Girdhar, AAG, Punjab.

KARAMJIT SINGH, J. (Oral)

1. Prayer is for grant of regular bail in case having FIR No.126 dated 17.06.2022 registered under Sections 21, 21-C of NDPS Act (Sections 29, 27, 27-A NDPS Act added later on) at Police Station STF, Phase-4, Mohali District SAS Nagar, Mohali.
2. The brief facts of the case are that police recovered 1.500 kgs. of heroin from the possession of co-accused Varun Tayal on 17.6.2022 and thereafter said Varun Tayal disclosed that petitioner is also involved in drug trafficking along with him. Consequently the petitioner was arrested on 20.6.2022 and 10 grams of heroin was recovered from his possession.
3. The counsel for the petitioner *inter alia* contends that the petitioner was not named in the FIR and later on falsely implicated in this case on the basis of alleged disclosure statement suffered by co-accused Varun Tayal and the said disclosure statement is subject matter of trial.

The counsel for the petitioner further submits that petitioner has nothing to do with the co-accused Varun Tayal and recovery of contraband, if any made from said co-accused. The counsel for the petitioner further submits that as per police, 10 grams of heroin was recovered from the possession of the petitioner and the same comes under non-commercial quantity and after completion of investigation, police has presented the challan but trial is at its initial stage. The counsel for the petitioner further submits that strict provisions of Section 37 of NDPS Act are not applicable to the recovery alleged to be made from petitioner, who is having no criminal history. So prayer is made that the present petition be allowed.

3. The instant petition is resisted by the State counsel, who submits that the petitioner was nominated as accused on the basis of disclosure statement made by co-accused Varun Tayal from whom police recovered 1.500 kg. of heroin. The State counsel further submits that 10 grams of heroin was recovered from possession of the petitioner, which comes under non-commercial quantity. However, the State counsel has not disputed the fact that the petitioner who is having no other criminal case is incarcerated for last more than 11 months and that the trial is at its initial stage.
4. I have considered the submissions made by counsel for the parties.
5. Admittedly the petitioner was not named in the FIR, which was registered against co-accused Varun Tayal from whom the police is stated to have recovered 1.500 kg. of heroin. As per prosecution Varun Tayal made disclosure statement against the petitioner and resultantly

the petitioner was nominated as accused and arrested on 20.06.2022 and 10 grams of heroin is stated to have been recovered from the possession of the petitioner, which comes under non-commercial quantity. The admissibility and relevance of disclosure statement suffered by co-accused Varun Tayal against the petitioner will be tested during trial. It is also moot point as to if the recovery of contraband effected from co-accused Varun Tayal is also to be counted towards the petitioner. Admittedly the petitioner is in custody for last more than 11 months and it will take considerable time for the trial to conclude. Apparently it appears that rigors of Section 37 of NDPS Act are not attracted to recovery of 10 grams of heroin stated to be effected from conscious possession of petitioner. No fruitful purpose is going to be served by prolonging judicial custody of the petitioner for indefinite period.

6. Thus, without commenting on the merits of the case, the petition is allowed and the petitioner is ordered to be released on bail subject to his furnishing bail and surety bonds to the satisfaction of the trial Court/CJM/Duty Magistrate concerned.

19.05.2023
Gaurav Sorot

(KARAMJIT SINGH)
JUDGE

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