

223

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-33745-2023

Date of Decision: 06.12.2023

Akashdeep Singh @ Akash

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Ms. Jasneet Mehra, Advocate
for the petitioner.

Mr. G.S. Sidhu, AAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

1. The present is a third petition filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case bearing FIR No.179 dated 08.06.2022, under Section 21/29/61/85 of the NDPS Act, 1985, registered at Police Station Maqboolpura, District Amritsar.

2. It has been submitted by learned counsel for the petitioner that petitioner is in custody for more than 1 year and 5 months and the charges were framed on 29.08.2023. She further submitted that the petitioner has clean antecedents and is not involved in any other case. She also submitted that as per the FIR, the petitioner was stated to be riding a motorcycle and the pillion rider was holding a plastic bag which was confiscated by police and it was weighing 251 grams of *Heroin*. She further submitted that the aforesaid contraband was weighed along with the polythene bag and therefore, the quantity confiscated is

on the border line of the commercial quantity as defined under the NDPS Act. She also submitted that the petitioner is a young boy and is not a habitual offender and in fact he has been falsely implicated in the present case due to political enmity and considering the aforesaid custody of the petitioner, he may be considered for grant of regular bail.

3. On the other hand, Mr. G.S. Sidhu, learned AAG, Punjab, submitted that so far as the custody of the petitioner is concerned, the same is correct and it is also correct that the petitioner is not involved in any other case and has clean antecedents. He has however submitted that even though the confiscated *Heroin* along with the polythene bag weighed 251 grams, the same falls under the category of commercial quantity, and therefore, the prayer of the petitioner is hit by the bar contained under Section 37 of the NDPS Act.

4. I have heard the learned counsels for the parties.

5. It is a case where the total custody of the petitioner has come out to be more than 1 year and 5 months and even as per the prosecution, the confiscation of 251 grams of *Heroin* along with polythene bag was not from the petitioner but was from the other co-accused. Even if the aforesaid quantity of 251 grams of *Heroin* is taken to be on border line of commercial quantity, then considering the total custody of the petitioner and the fact that the petitioner has clean antecedents and is not involved in any other case, this Court is of the view that the bar contained under Section 37 of the NDPS Act will not be applicable to the present petitioner in the light of Article 21 of the Constitution of India and also in view of the judgment passed by the Hon'ble Supreme Court in "Satender Kumar Antil Vs. Central Bureau of Investigation and another", 2022(10) SCC 51. Furthermore, it is neither the case of the State nor it has been

CRM-M-33745-2023

so argued by the learned State counsel that in case the petitioner is released on bail then he may abscond or flee from justice or may repeat the offence.

6. In view of the above, this Court deems it fit and proper to grant regular bail to the petitioner. Consequently, the present petition is allowed and the petitioner is ordered to be released on regular bail on furnishing bail bond/surety bond to the satisfaction of the trial Court/Duty Magistrate concerned, if not required in any other case.

7. However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is only meant for the purpose of decision of present petition.

06.12.2023
Bhumika

(JASGURPREET SINGH PURI)
JUDGE

1. Whether speaking/reasoned:	Yes/No
2. Whether reportable:	Yes/No