

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

CRM-M-33873-2023

Date of Decision:-21.07.2023

Ashok Kumar.

.....Petitioner.

Vs.

State of Haryana.

.....Respondent.

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

Present:- Mr. Parminder Singh Sekhon, Advocate for the Petitioner.

Mr. Neeraj Poswal, AAG Haryana.

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.642 dated 29.11.2022 under Sections 21-B and 27-A of the NDPS Act, 1985 registered at Police Station City Fatehabad, District Fatehabad.

2. The brief facts of the case are that while the police party was on patrolling duty a young boy was seen standing in front of the Bhatia Colony turn who on seeing the police vehicle immediately turned back and started walking fast. He was apprehended on suspicion and disclosed his name as Ashok Kumar (petitioner). After complying with the formalities regarding search and seizure he was found to be in possession of 9.80 grams of Heroin.

3. The Counsel for the petitioner contends that there is violation of the mandatory provisions of the Act including Section 50. Non commercial quantity of contraband i.e. 9.8 grams of Heroin has been recovered from the petitioner. The co-accused of the petitioner who had been named on his disclosure statement have been granted the concession of bail. As the

petitioner was in custody since 29.11.2022 and none of the 16 prosecution witnesses had been examined so far, he was entitled to the concession of bail when he had been granted the similar relief of regular bail in an earlier FIR No.261 dated 7.5.2022 under Sections 21(b) of the NDPS Act, P.S. City Fatehabad (Annexure P-4).

4. The Counsel for the State on the other hand contends that while it is true that the recovery from the petitioner in the present case is of non commercial quantity of contraband he was not entitled to the concession of bail as he was a habitual offender. It is his contention that an FIR No.261 dated 7.5.22 under Section 21(b) of the NDPS Act had been registered against the petitioner with regard to the recovery of 32 grams of Heroin. He was granted the concession of bail by this Court observing that he had got clean antecedents vide order dated 01.08.2022. However, now he has been arrested in the instant FIR just 04 months after he was granted bail in the earlier case. He, therefore, contends that the conduct of the petitioner did not entitle him to the grant of bail. Even otherwise, the offences of this kind are on the rise and undue leniency ought not be shown to an accused under the NDPS Act.

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

6. This Court in ***Soni Singh @ Chamkaur Singh Vs. State of Punjab CRM-M-31645-2022 Decided on 20.10.2022*** has held as under:-

*“ Admittedly, the petitioner in the present case is named in the disclosure statement of the arrested accused. Subsequently thereto 3Kgs of Poppy Husk was recovered at his instance which is a non commercial quantity. It may be relevant to mention here that limitations to the grant of bail under Section 37 of the NDPS Act are in addition to those prescribed under Cr.PC or any other law inforce on the grant of bail as has been set out by the Hon'ble Supreme Court in **Satpal Singh Vs. State***

of Punjab 2018(5) RCR (Criminal) 152. In the present case, the petitioner is involved in two other cases under the NDPS Act. Thus, as he is a habitual offender, he is not entitled to the grant of bail even under Section 439 Cr.PC keeping in view his antecedents. Even otherwise, assuming that the rigors of Section 37 of the NDPS Act did not apply to the petitioner, that by itself would not ipso facto lead to the grant of bail to the petitioner.

In view of the above discussion, I find no merit in the present petition and the same is therefore dismissed.”

7. Coming back to the facts of the present case, it may be pertinent to mention here that the first FIR against the petitioner came to be registered on 7.5.2022 for possessing 32 grams of Heroin. The petitioner was granted bail on 01.08.2022. Immediately within 04 months the petitioner has been involved in the present case where once again recovery is of non commercial quantity of contraband. Though it is true that the provisions of Section 37 of the NDPS Act would not be applicable, however, the petitioner being a habitual offender is not entitled to the grant of bail even under Section 439 Cr.PC. Even otherwise, merely because the provisions of Section 37 of the NDPS Act did not apply to the petitioner would not by itself lead to the grant of bail to the petitioner and a bail application is to be considered in the light of the peculiar facts of a case.

8. In view of the above discussion, I find no merit in the present petition and the same is therefore dismissed.

(JASJIT SINGH BEDI)
JUDGE

July 21, 2023
Vinay

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