

**206 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CRM-M-37712-2023****Date of decision : 06.11.2023****Jagdeep Singh @ Jaggi @ Jojji****.....Petitioner****versus****State of Punjab****..... Respondent****CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ***********Present :- Mr. Kanwaljeet Singh Brar, Advocate
for the petitioner.****Ms. Akshita Chauhan, DAG, Punjab.***********RAJESH BHARDWAJ, J. (Oral)**

Petitioner has approached this Court by way of present second petition praying for grant of regular bail in case FIR No.149 dated 04.05.2022, under Section 22(C) and 29 of NDPS Act, 1985, registered at Police Station City Faridkot, District Faridkot.

Adumbrated facts of the case are that on receiving the secret information that accused persons namely, Shivam, Ravi, Deepak @ Gutri Wala, Baljit Singh, Hira Singh, Amritpal Singh @ Jinda and Pardeep Kumar @ Bablu are indulged in selling intoxicants. In pursuance to the same, naqa was laid. Accused persons were coming in the car, on seeing the police party, they threw a packet containing the powder and were apprehended. The packet was recovered which was found to be containing 300 grams of heroin. Thereafter, the FIR was registered. All the accused failed to justify the possession of the contraband recovered and thus, were arrested on the spot. On the disclosure statement of co-accused Shivam, petitioner was named. The police party raided the house of the petitioner and recovered 50 grams of heroin from his possession. Thus, the petitioner was also arrayed as

accused and all the seven accused were prosecuted for the offence under Section 22 of NDPS Act for carrying 350 grams of heroin illegally. Petitioner was also arrested on 04.05.2022. He approached the Special Court, Faridkot praying for grant of bail, however, after hearing counsel for both the sides, learned Special Court declined the same vide order dated 13.07.2022. Aggrieved by the same, petitioner earlier approached this Court, however, petition was allowed to be dismissed as withdrawn vide order dated 22.03.2023. Hence, petitioner is before this Court by way of present second petition.

Learned counsel for the petitioner submits that the petitioner has been falsely implicated in this case. He has submitted that as is evident, the present FIR was lodged on the basis of secret information where seven accused were named. He submits that petitioner was not named in the secret information received however, he has been named in this case on the basis of the disclosure statement made by the co-accused. He submits that the disclosure made by the co-accused is not even admissible evidence. He has submitted that on the alleged raid conducted in the house of petitioner, recovery of 50 grams of heroin was effected from the petitioner. He has submitted that recovery made from the petitioner is of non-commercial quantity. He further submits that petitioner was not present on the spot when recovery of 300 grams of heroin was effected from the rest of seven accused. He has submitted that at the most, petitioner can be prosecuted for the alleged recovery of 50 grams effected from him and not for the complete 350 grams of heroin. He submits that petitioner is behind bars since the date of his arrest and till date, no witness has been examined. He submits that learned trial

presence of the official witnesses for their examination. He produced on record the zimini orders passed by the Special Court dated 07.08.2023, 29.08.2023, 19.09.2023 and 16.10.2023 for securing presence of the official witnesses but they intentionally did not appear before the trial Court only to prolong the incarceration of petitioner. He submits that there is non-compliance of the provisions of Section 42 of NDPS Act. He submits that petitioner has no criminal antecedents and thus, he deserves to be granted regular bail.

Per contra, learned State counsel has opposed the submissions made by counsel for the petitioner. She submits that co-accused were arrested on the basis of secret information received and the petitioner was named on the basis of disclosure made by the co-accused. She submits that petitioner was also arrested on the very same day when the co-accused were arrested. She has submitted that as the petitioner was part of the same group, thus, he is liable to be prosecuted for the total amount of heroin recovered from the co-accused and that from him which amounts to 350 grams of heroin which is commercial quantity. However, she submits that petitioner is not involved in any other case except the present case.

I have heard counsel for the parties and perused the record.

Evidently, FIR in this case was registered on the basis of secret information received by the police. As is apparent, petitioner was not named in the secret information received, however, his name surfaced in the FIR on the basis of disclosure made by the co-accused. On the raid conducted of his house, 50 grams of heroin was recovered from him. The zimini orders produced by counsel for the petitioner would reveal that the

official witnesses are time and again being summoned by the Special Court by issuingailable warrants but they did not appear so far. As submitted by counsel for the State, in all, there are 19 prosecution witnesses and till date no witness has been examined. Whether the petitioner is liable to be prosecuted in a commercial quantity or non-commercial quantity is a matter of trial. This Court would refrain itself from commenting anything on the merits of the case. However, it is apparent that the petitioner is behind bars since 04.05.2022.

The veracity of the allegations would be assessed only after conclusion of the trial and on the appreciation of evidence to be led by both the parties before the trial Court. Keeping in view the arguments raised by both the sides and perusing the record, this Court is of the opinion that learned counsel for the petitioner succeeds in making out a case for grant of regular bail. Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

06.11.2023
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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