

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-41901-2023

Date of decision : 29.08.2023

Sunil Kumar

....Petitioner

Versus

State of Punjab

....Respondent

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present :- Mr. R.S. Waraich (Rana), Advocate for the petitioner.

Mr. Gurpreet Singh, Addl.AG, Punjab.

HARSIMRAN SINGH SETHI, J. (ORAL)

The present petition has been filed for grant of regular bail to the petitioner in case FIR No.526 dated 22.12.2022, under Section 22 of NDPS Act registered at Police Station Division No.7, Commissionerate, Ludhiana.

Learned counsel for the petitioner argues that in the present case, as per the allegations alleged in the FIR, the contraband recovered was weighed along with the carry bag and the net weight of the said contraband arrived at 255 grams. He submits that once the contraband has been weighed along with the carry bag, it cannot be said that the weight of the contraband was more than 250 grams so as to describe it as a commercial quantity. Learned counsel further submits that the petitioner is behind bars since 22.12.2022 and as of now, only challan has been presented and as the trial is likely to take sufficient long time before it is concluded, the petitioner be granted the concession of regular bail.

Learned State counsel concedes the factum that as per the allegation, the petitioner was seen holding the polythene carry bag and as per the FIR, the contraband was weighed along with polythene bag. He submits that total weight

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found was 255 grams. He further concedes that as of now, charges have not been framed though the challan has been presented after the conclusion of the investigation.

I have heard learned counsel for the parties and gone through the record with their able assistance.

From the facts, which have been mentioned hereinabove, it is clear that the contraband allegedly recovered from the petitioner was weighed along with the carry bag and the total weight of the contraband as well as that of carry bag has been recorded as 255 grams. As of now, the sole question raised so as to seek concession of regular bail that once the contraband was weighed with the carry bag, whether the actual weight of the contraband is 250 grams or more to be treated as commercial quantity is a disputed question of fact and actual weight of the contraband will only depend on the evidence, which will come on record during the trial. On the basis of the fact which exists as of now, it cannot be said with certainty that the weight of the contraband is more than 250 grams so as to be treated as commercial quantity, hence the rigorous of Section 37 of NDPS Act cannot be imposed while considering the claim of the petitioner for grant of bail.

Further taking into consideration the other facts that there is no other case pending against the petitioner and as of now the investigation is concluded and the challan has been presented but the charges are yet to be framed, the trial is likely to take sufficient time before it concludes, hence no useful purpose will be achieved by keeping the petitioner behind the bars during the entire period of trial especially when learned counsel for the petitioner has undertaken to comply with the following directions, in case the concession of bail is granted to the petitioner:

“1. The petitioners will not tamper with the evidence during the trial.

2. The petitioners will not pressurize / intimidate the prosecution witness(s).

3. The petitioners will appear before the trial Court on the date fixed, unless personal presence is exempted.

4. The petitioners shall not commit an offence similar to the offence of which he is accused of, or for commission of which he is suspected.

5. The petitioners shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

In case of breach of any of the above conditions, the prosecution shall be at liberty to move an application for cancellation of bail, before this Court.

Keeping in view the above, present petition seeking grant of regular bail is allowed. The petitioner is directed to be released on bail subject to his furnishing bail/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate, in case the petitioner is not required to be kept behind bars in any other criminal case.

Nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

August 29, 2023
manoj

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned: Yes
Whether Reportable : No

