

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

CRM-M-41968-2023

Date of Decision:-31.08.2023

Rahul Kumar.

.....Petitioner.

Vs.

State of Punjab.

.....Respondent.

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

Present:- Mr. G.S. Verma, Advocate for the Petitioner.

Mr. Harkanwar Jeet Singh, Assistant Advocate General, Punjab.

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.206 dated 05.12.2022 under Sections 18 of the NDPS Act registered at Police Station Khanna City-2, District Ludhiana, Punjab.

2. The brief facts of the case are that while the police party was on patrolling duty, two persons were seen coming towards Mandi Gobindgarh carrying a bag. On seeing the police party they became perplexed and tried to turn back. They were apprehended and disclosed their names as Rahul Kumar (petitioner) and Raju Dangi. After complying with the provisions of the Act regarding search and seizure, the recovery of 2 Kg 551 grams of Opium was effected from petitioner-Rahul Kumar whereas recovery of 2 Kg 83 Grams of Opium came to be effected from co-accused Raju Dangi (since granted bail by the Trial Court vide order dated 01.03.2023).

3. The learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case. The petitioner has been in custody since 05.12.2022 and none of the 12 prosecution witnesses

have been examined so far. Therefore, the trial of the present case was not likely to be concluded anytime soon. Even otherwise, as the recovery from the petitioner was marginally above the commercial quantity of 250 grams of Opium, the petitioner was entitled to the grant of bail.

4. On the other hand, the learned State counsel contends that commercial quantity of contraband has been recovered from the petitioner. Therefore, he was not entitled to the concession of bail in view of the bar contained under Section 37 of the NDPS Act. He, however, concedes that the petitioner is a first time offender, in custody since 05.12.2022 and none of the 12 prosecution witnesses had been examined so far.

5. I have heard the learned counsel for the parties.

6. In the cases of '*Sukhchain Singh @ Manga Versus State of Punjab, CRM-M-7857-2022 decided on 04.04.2022, Pardeep Singh versus State of Punjab, CRM-M-46244-2022 decided on 19.01.2023, Hari Yadav @ Haiya versus State of Punjab (CRM-M-37645-2021)*' decided on 11.11.2022, '*Jang Kanwar Versus State of Punjab (CRM-M-53415-2021)*' decided on 19.01.2022, '*Shankar Prashad Chanau Versus The State of Punjab, CRM-M-24090-2020, decided on 27.08.2020, Gurpreet Kumar Versus State of Punjab, CRM-M-17021-2021, decided on 31.08.2021, Salim Versus State of Haryana, CRM-M-42436-2020, decided on 24.02.2021, Gagandeep Versus State of Punjab, CRM-M-3055-2021, decided on 27.01.2021, Gurpreet Singh @ Gopi Versus State of Punjab, CRM-M41039-2019, decided on 26.02.2020, Dalbara Singh Versus State of Punjab, CRM-M-47880-2022 decided on 16.01.2023*', and '*Vivek Watts versus State of Punjab, CRM-M-13791-2022 decided on 15.02.2023*', where the recovery from the accused was marginally above the commercial quantity for the respective contraband in each case, the Court granted bail to the accused therein.

7. In the present case, the alleged recovery from the petitioner is 2 Kg 551 grams of Opium, which is marginally above the commercial quantity of 2.5 Kg. In this situation, the provisions of Section 37 of the NDPS Act can be relaxed to an extent and the case of the petitioner can be considered for the grant of bail, moreso, when he is in custody since 05.12.2022 and his co-accused Raju Dangi has been granted bail by the Trial Court and none of the 12 prosecution witnesses have been examined so far.

8. Thus, without commenting upon the merits of the case, the

present petition is allowed and the petitioner-**Rahul Kumar** son of Sh. Musafir Dangi is ordered to be released on bail to the satisfaction of the Trial Court/Duty Magistrate concerned.

9. The petitioner shall appear on the first Monday of every month before the police station concerned till the conclusion of the trial and furnish an affidavit each time that he is not involved in any other case other than the present case.
10. In addition, the petitioner (or someone on his behalf) shall prepare an FDR in the sum of Rs.1,00,000/- and deposit the same with the Trial Court. The same would be liable to be forfeited as per law in case of the absence of the petitioner from Trial without sufficient cause.
11. The petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

August 31, 2023
Vinay

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