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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-42273-2022

Date of Decision: 08.11.2023

Vikram alias Vicky

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Vikas Bishnoi, Advocate,
for the petitioner.

Mr. Vishal Kashyap, DAG, Haryana.

JASGURPREET SINGH PURI, J. (ORAL)

1. The present petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case bearing FIR No.197 dated 16.09.2021, under Section 21(C) of the NDPS Act and during investigation Section 27-A of the NDPS Act has been added, registered at Police Station Sadar Tohana, District Fatehabad.

2. It has been submitted by the learned counsel for the petitioner that the petitioner is in custody since 16.09.2021 which is more than 2 years and now 4 prosecution witnesses have been examined. He further submitted that the allegation in the present case was that there was an alleged recovery of 265 grams of *Heroin* from the petitioner and one of the other co-accused, namely, Sonu. He also submitted that allegedly there was a recovery of 115 grams of *Heroin* from the petitioner which does not fall in the category of commercial quantity under the NDPS Act and 150 grams of *Heroin* from the aforesaid co-accused, namely, Sonu which also does not fall in the category

of commercial quantity. However, jointly the weight of the *Heroin* comes to be 265 grams whereas the commercial quantity is defined as 250 grams and therefore, even otherwise also the total quantity is marginally higher than the prescribed commercial quantity under the NDPS Act. He further submitted that the petitioner is not involved in any other case under the NDPS Act and now the custody of the petitioner is more than 2 years. He also submitted that the aforesaid co-accused, namely, Sonu has since been extended the benefit of regular bail by a Co-ordinate Bench of this Court vide Annexure P-3 on 05.05.2022 and the petitioner, from whom, there was an alleged recovery of only 115 grams of *Heroin* whereas from the aforesaid co-accused it was 150 grams of *Heroin* and submitted that even otherwise on the ground of parity as well, the petitioner may be considered for the grant of regular bail. He further submitted that the bar contained under Section 37 of the NDPS Act will not apply to the present petitioner considering the alleged recovery from the petitioner which is only 115 grams of *Heroin*.

3. On the other hand, Mr. Vishal Kashyap, learned DAG, Haryana, submitted that so far as the custody of the petitioner is concerned, the same is correct and it is also correct that the other co-accused, namely, Sonu has been extended the benefit of regular bail by a Co-ordinate Bench of this Court vide Annexure P-3. He has however opposed the grant of bail to the petitioner on the ground that from the petitioner and the aforesaid co-accused, there was total recovery of 265 grams of *Heroin* which falls in 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. He also submitted that the petitioner is not involved in any other case under the

NDPS Act but is involved in one case under the IPC.

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

5. The petitioner has already faced incarceration for more than 2 years and 4 witnesses have already been examined. The petitioner has claimed parity with the other co-accused, namely, Sonu, from whom, there was an alleged recovery of 150 grams of *Heroin* but from the petitioner allegedly only 115 grams of *Heroin* was recovered and the aforesaid Sonu has already been extended the benefit of regular bail by a Co-ordinate Bench of this Court on 05.05.2022 which is also more than one year ago and now the total custody of the petitioner is more than 2 years. Therefore, this Court is of the view that the bar contained under Section 37 of the NDPS Act will not apply to the present petitioner and the petitioner is also entitled for the grant of regular bail purely on the ground of parity.

6. 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.

8. 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.

08.11.2023

Bhumika

(JASGURPREET SINGH PURI)
JUDGE

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