

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-43128-2023

Date of decision : 05.10.2023

BALBIR SINGH @ GOLU

....Petitioner

Versus

STATE OF PUNJAB

....Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Jtinder S. Dadwal, Advocate
for the petitioner.

Mr. Amit Shukla, AAG, Punjab

PANKAJ JAIN, J. (ORAL)

This petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case F.I.R. No.0184 dated 3rd of December, 2022 registered for the offences punishable under Sections 21, 29, 61 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act') at Police Station Division No.3, Ludhiana.

2. Custody Certificate of the petitioner has been filed today in Court. The same is taken on record.

3. Petitioner has been booked in the present FIR alleging that he was found to be in conscious possession of a packet containing *heroin* which when weighed was found to be 253 grams.

4. Counsel for the petitioner has drawn attention of this Court to the Recovery Memo drawn in the present case which has been placed on record as Annexure P-2 to submit that it is evident that the contraband was

weighed along with polythene envelop and the polythene envelop was not recovered from the conscious possession of the petitioner but was found to be lying at his feet while he was apprehended from WagonR Car. He thus contends that the notified commercial quantity of the *heroin* being above 250 grams, the issue regarding the quantity recovered from the petitioner having been weighed along with the plastic envelop would be a serious issue and by counting the weight of the polythene as well as the probable mechanical error it will be highly debatable as to whether the quantity recovered from the petitioner is commercial or less than commercial and thus at this stage it cannot be axiomatically held that bar under Section 37 of the NDPS Act would be attracted. He further submits that the petitioner is behind bars since 7th of December, 2022 i.e. more than 10 months. Challan already stands presented and the petitioner has no other criminal antecedents.

5. Per contra, State Counsel argues that the quantity recovered from the petitioner being more than 250 grams is indeed commercial and thus bar under Section 37 of the NDPS Act would be attracted and no leniency should be granted to the petitioner.

6. Having heard counsel for the parties and after going through records of the case this Court finds that it is not a case of manufactured drug that the weight of the contraband can be said to be standard weight and the exhibited weight can be taken into consideration. The contraband was indeed weighed along with the plastic envelop and there is a margin of

3 grams only.

7. In order to substantiate his arguments, counsel for the petitioner has placed reliance upon orders passed by Co-ordinate Benches of this Court in **CRM-M No.41242 of 2019** titled as '**Jagjit Singh @ Jagga Gill and others vs. State of Punjab**', dated 27th of February, 2020 and **CRM-M-37684-2021** titled as '**Balwinder Singh vs. State of Punjab**', dated 14th of February, 2022.

8. Keeping in view the aforesaid circumstances and since counsel for the petitioner has been able to make out a case on 'as to whether Section 37 of the NDPS Act would be attracted is an issue', this Court finds that the petitioner having clean antecedents deserves to be released on bail.

9. In view of above, without commenting on the merits of the case, keeping in view the incarceration already suffered by the petitioner and the fact that the investigation already stands concluded and Challan stands presented, the present petition is allowed. The petitioner is ordered to be released on bail on his furnishing bail bonds/surety bonds to the satisfaction of the Trial Court/Duty Magistrate concerned.

10. However, in addition to conditions that may be imposed by the Trial Court/Duty Magistrate concerned, the petitioner shall remain bound by the following conditions :-

- (i) The petitioner shall not mis-use the liberty granted.
- (ii) The petitioner shall not tamper with any evidence oral or documentary during the trial.
- (iii) The petitioner shall not absent himself on any date

before the trial.

- (iv) The petitioner shall not commit any offence similar to the one alleged in the present case.
- (v) The petitioner shall deposit his passport, if any with the trial Court.
- (vi) The petitioner shall give his cellphone number to the police authorities and shall not change his cell-phone number without permission of the trial Court.
- (vii) The petitioner shall not in any manner try to delay the trial.

11. In case of breach of any of the aforesaid conditions and those which may be imposed by the Trial Court, the prosecution shall be at liberty to move cancellation of bail of the petitioner.

October 05, 2023	(Pankaj Jain)
Dpr	Judge
Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No