

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

CRM-M-48418-2023

Date of Decision:-12.10.2023

Saurab.

.....Petitioner.

Vs.

State of Haryana.

.....Respondent.

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

Present:- Mr. Sanjeev Kumar, Advocate for the Petitioner.

Mr. Kanwar Sanjiv Kumar, Assistant Advocate General,
Haryana.

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.256 dated 17.07.2023 under Section 29 and 21 of Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station Mullana, District Ambala.

2. The brief facts of the case are that while the police party was on patrolling duty secret information was received that Saurabh (petitioner) was doing the business of selling intoxicating substances and would visit Kaala Amb to sell Heroin to his customers in his vehicle number HP 17G 6201. If a blockade was set up he could be apprehended.

Based on the aforesaid information the blockade was set up and a young boy was seen in a White Pick Up coming from the side of Nahan in vehicle number HP 17G 6201. On seeing the police party standing in front, he stopped the vehicle, got out of the same and tried to run away. He was apprehended and the recovery of 5.65gms of Heroin came to be recovered

from him contained in a Polythene.

3. The counsel for the petitioner contends that the petitioner has been falsely implicated in the present case. No independent witness was joined at the time of search and seizure. However, taking the prosecution case to be correct the alleged recovery of contraband was 5.8 grams (including the polythene bag) and, therefore, was only marginally above, the small quantity of Heroin which was 5 grams. As the recovery was of a quantity less than commercial quantity of contraband the provisions of Section 37 of the NDPS Act did not apply. Therefore, the petitioner was entitled to the concession of bail as he was a first time offender, in custody since 17.07.2023 and none of the 17 PWs had been examined so far.

4. On the other hand, the learned State counsel contends that the offences of this kind were on the rise and no sympathy ought to be shown to the petitioner. He however states that the recovery is of a quantity smaller than the commercial quantity for Heroin. He concedes that the petitioner was a first time offender, in custody since 17.07.2023 and none out of the 17 prosecution witnesses had been examined so far.

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

6. Admittedly, the recovery from the petitioner is of quantity marginally above the smaller quantity of 5 grams of Heroin. The petitioner is stated to be in custody since 17.07.2023 and none of the 17 prosecution witnesses have been examined so far. He is also stated to be a first time offender. In this situation his further incarceration is not required.

7. Thus without commenting on the merits of the case, the present petition is allowed and the petitioner-**Saurabh** son of Sh. Rishi Sawroop is ordered to be released on bail subject to his furnishing bail bonds and surety bonds to the satisfaction of learned CJM/Duty Magistrate, concerned.

8. The petitioner shall appear before the police station concerned on the first Monday of every month till the conclusion of the trial and inform in writing each time that he is not involved in any other crime other than the present case.
9. In addition, the petitioner (or anyone on his behalf) shall prepare an FDR in the sum of Rs.25,000/- 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.
10. The petition stands disposed of.

(JASJIT SINGH BEDI)

JUDGE

October 12, 2023

Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>