

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CRM-M-52308-2022 (O & M)****Date of decision: 06.01.2023**

Sandeep Kumar @ Deepu

.... Petitioner

V/s

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Gagandeep Singh Bajwa, Advocate, for the petitioner.

Ms. Ramta Chaudhary, DAG, Punjab.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 439 Cr.P.C. is for the grant of regular bail to the petitioner in case FIR No.144 dated 29.06.2022 under Section 21(c), 29 of the NDPS Act, registered at Police Station STF, SAS Nagar, District Mohali.

2. The brief facts of the case are that secret information was received that Suraj Kumar @ Suraj and Sandeep Kumar @ Deepu (the present petitioner) were indulging in the selling of heroin and both were going to give a supply to their customers at Jahajgarh Pataka Market. If a *naka* was set-up, they could be apprehended with the contraband.

Based on the said information, a *naka* was set-up. After some time, two young men were seen coming from the side of Jahajgarh Pataka Market, they were rounded up and on an enquiry one person disclosed his name as Suraj Kumar @ Suraj whereas the other person disclosed his name as Sandeep Kumar @ Deepu. After conducting the search of the accused in accordance with law, the recovery of 300 grams heroin was effected from

the left pocket of lower of Suraj Kumar, co-accused. However, no recovery was effected from the petitioner.

3. The learned counsel for the petitioner submits that the provisions of Section 50 have not been complied with in its proper perspective. Be that as it may, so far as the present petitioner is concerned, no recovery has been effected from his person. He is a first-time offender and is in custody since 29.06.2022. Since no recovery has been effected from his person, it would be a matter of adjudication during Trial as to whether he could be said to be in conscious possession of contraband purportedly recovered from his co-accused.

4. The learned counsel for the State, on the other hand, contends that the petitioner was arrested alongwith his co-accused from who 300 grams of heroin was recovered. He contends that the petitioner was not entitled to the grant of bail as the secret information revealed that both the accused were dealing in contraband. He, however, does not dispute the fact that no recovery was effected from the petitioner and that the petitioner is a first-time offender.

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

6.. Admittedly, 300 grams of heroin was recovered from Suraj Kumar @ Suraj, the co-accused of the petitioner. From the personal search of the petitioner, no recovery whatsoever was effected. It would a matter of adjudication during Trial as to whether the petitioner could be said to be in conscious possession of the contraband allegedly recovered from his co-accused. Therefore, at this stage, a prima facie satisfaction under Section 37 of the NDPS Act can be recorded that the petitioner has not committed the offence and not likely to commit an offence, moreso, when there is no other

prosecution witnesses has been examined so far, which would further delay the conclusion of the Trial. As such, the further incarceration of the petitioner is not required.

9. Thus, without commenting upon the merits of the case, the present petition is allowed and the petitioner, namely, Sandeep Kumar @ Deepu is ordered to be released on bail to the satisfaction of the Trial Court/Duty Magistrate concerned.

(JASJIT SINGH BEDI)
JUDGE

January 06, 2023
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No