

CRM-M-51908-2023

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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-51908-2023
Date of Decision: 18.10.2023

Jhony Masih @ John Masih

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Ms. Gurmeet Kaur, Advocate,
for the petitioner.

Mr. H.S. Sitta, DAG, Punjab.

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.34 dated 13.04.2023, under Sections 21, 29 and 27(a) NDPS Act, 1985, registered at Police Station Tibber, District Gurdaspur.

2. Learned counsel for the petitioner submitted that the petitioner is in custody since 07.05.2023 and the allegations in the present case were pertaining to other two co-accused, namely, Gagandeep Singh @ Gagan and Satnam Singh @ Joti, from whom the alleged recovery of 5 grams of *Heroin* was effected. She further submitted that earlier the petitioner had filed a bail petition before this Court and the same was dismissed as withdrawn on 09.08.2023 vide Annexure P-7 but thereafter, the aforesaid two co-accused

from whom the alleged recovery was effected have been granted regular bail by this Court vide orders dated 20.07.2023 and 15.09.2023 (Annexures P-4 & P-5) respectively. She also submitted that although the petitioner is involved in three more cases, but in the present case, his name has been surfaced only on the basis of disclosure statement of aforesaid co-accused, which is not admissible in evidence and apart from the above, now the co-accused from whom the alleged recovery was made, have been extended the concession of regular bail, therefore, the petitioner may also be considered for grant of regular bail. She further submitted that the alleged quantity recovered from the co-accused was only 5 grams of *Heroin* and the same does not fall in the category of commercial quantity under the NDPS Act.

3. On the other hand, Mr. H.S. Sitta, learned DAG, Punjab has stated that it is correct that the petitioner is in custody from 07.05.2023 and the other co-accused, namely, Gagandeep Singh @ Gagan and Satnam Singh @ Joti, from whom recovery of 5 grams of *Heroin* was effected have been extended the benefit of regular bail vide Annexures P-4 & P-5. He, however, submitted that even if the recovery from the co-accused is of 5 grams of *Heroin*, which does not fall in the category of commercial quantity, but the offence involved in present case is under Section 27-A of the NDPS Act as well and therefore, the bar contained under Section 37 of the NDPS Act will apply in the present case and the petitioner is involved in 3 more cases of similar nature.

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

5. It is a case where the petitioner is in custody since 07.05.2023 and there was a recovery of 5 grams of *Heroin* from the other co-accused,

namely, Gagandeep Singh @ Gagan and Satnam Singh @ Joti, who have since been extended the benefit of regular bail by this Court vide Annexures P-4 & P-5. So far as the present petitioner is concerned, his name is surfaced on the basis of disclosure statment of the aforesaid co-accused. The provision under Section 27-A of the NDPS Act is also added and therefore, the effect of Section 37 of the NDPS Act also has to be considered. In the present case, there is no recovery from the present petitioner, but from the other co-accused and the other co-accused from whom the recovery has been made have been extended the concession of regular bail, and therefore, this Court is of the view that the bar contained under Section 37 of the NDPS Act will not apply in the present case qua the petitioner. Consequently, this Court deems it fit and proper to grant regular bail to the petitioner.

6. In view of the above, 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.

7. 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.

18.10.2023

Bhumika

(JASGURPREET SINGH PURI)

JUDGE

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