

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

**CRM-M-51806-2023 (O&M)
Date of Decision:14.12.2023**

Joginder @ Chintu

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Amit Choudhary, Advocate for the petitioner.

Mr. Naveen Kumar Sheoran, DAG, Haryana,

JASGURPREET SINGH PURI J.(Oral)

1. The present is a second petition filed under Section 439 of the Code of Criminal Procedure, for grant of regular bail to the petitioner in case bearing FIR No.291 dated 14.12.2021, under Section 21(b) of NDPS Act (Section 27A added later on) registered at Police Station Bhuna, District Fatehabad.

2. Learned counsel for the petitioner submitted that the present is a second successive bail petition filed by the petitioner and the petitioner is in custody for about 01 year and 10 months and charges have been framed on 19.04.2023 but no witness has been examined till date. He further submitted that the earlier bail petition filed by the petitioner was dismissed on 18.07.2023 vide Annexure P-4 and thereafter the present successive bail petition has been filed only on the ground of increased custody.

3. He further submitted that although the petitioner is involved in 28 more cases out of which 07 cases are pertaining to NDPS Act but he

petitioner has been nominated on the basis of the disclosure statement of a co-accused namely Jatin who was apprehended and from whom there was a recovery of 10 grams of Heroin and aforesaid Jatin is already on bail and therefore the petitioner may be considered for grant of regular bail in the present case.

3. On the other hand, Mr. Naveen Kumar Sheoran, DAG, Haryana, has opposed the prayer for grant of bail to the petitioner. He submitted that when the earlier bail petition was filed by the petitioner, the same was dismissed by this Court on merits on 18.07.2023 in CRM-M-15293-2023 and thereafter there has been no change of circumstance. He submitted that the elongated custody of five months cannot be considered to be a changed circumstance. He submitted on merits that even when the earlier detailed order was passed by this Court in the earlier bail petition, a detailed affidavit was filed by the State and while reiterating the submissions, he submitted that it is a case where a recovery was effected from the co-accused namely Jatin, but he was granted the benefit of bail by the learned Sessions Court since the recovery from him was only 10 grams of Heroin. He has further submitted that so far as the prayer of the present petitioner for grant of bail is concerned, he is not entitled in view of the magnitude and gravity of the offence to the extent that he is a habitual offender and he is involved in large number of cases as aforesaid regarding which although an affidavit has not been filed by the State in the present petition but in the earlier bail petition, an affidavit was filed but it is not in dispute that 28 more cases are pending against the petitioner and many of them are pertaining to NDPS Act. Out of those cases he has also been convicted in some of the cases and has been acquitted in some other cases and some are still pending. The learned

namely Jatin was arrested then he suffered a statement that he had received total 100 grams of Heroin from the present petitioner for the purpose of selling and for earning money out of which he has already sold 90 grams to different people and remaining 10 grams was left which was now recovery in the present case. The learned State Counsel further submitted that the petitioner is the basic source of supplying the Heroin to large number of people for further reselling and in this way large section of society is being affected because of the action of the petitioner. He has submitted that there is a strong apprehension that in case the petitioner is released on bail, he may not only abscond from justice but he may repeat the offence. He also submitted that considering the aforesaid facts and circumstances, the petitioner is not entitled for the grant of regular bail.

4. I have heard learned counsel for the parties.

5. The petitioner is stated to be in custody for about 01 year and 10 months. An argument has been raised by learned counsel for the petitioner that since the petitioner is nominated on the basis of disclosure statement of co-accused and recovery in the present case from the co-accused is only 10 grams of heroin and disclosure statement of a co-accused is not admissible in evidence *per se* and as such he is entitled for the grant of bail. This court is unable to accept the argument raised by learned counsel for the petitioner. So far as the aforesaid quantity of 10 grams of Heroin is concerned, the same certainly does not fall in the category of commercial quantity. However, the provisions of Section 27A which were added later on have been invoked and, therefore, considering the aforesaid provision of 27A of NDPS Act, the bar of Section 37 of NDPS Act will be attracted.

The provisions of Section 37 are reproduced as under:-

[37. Offences to be cognizable and non-bailable. — (1)

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)-

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for ³ [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of subsection (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.] “

6. So far as the submission made by learned counsel for the petitioner with regard to the fact that the petitioner was purely nominated on the basis of the disclosure statement of co-accused, therefore he is entitled for the grant of regular bail is also not acceptable in view of the fact that although disclosure statement of a co-accused is not admissible in evidence *per se* but the totality of the facts and circumstances are also to be seen for the purpose of considering the prayer for grant of regular

bail. As per the learned State counsel, the petitioner is involved in as many as 28 cases out of which he has been convicted in some of them, acquitted in some of them and remaining are pending. He also submitted that in the present case, the person from whom the aforesaid heroin was confiscated namely Jatin was given 100 grams of heroin by the petitioner and he had sold 90 grams to different persons and only 10 grams were remaining to him and thereafter he was caught and the petitioner is habitual in selling and reselling of heroin to large section of society. Therefore this Court is of the view that considering the overall facts and circumstances, the petitioner does not deserve the concession of regular bail because of the magnitude and gravity of the offence involved in the present case on the basis of the argument raised by the learned counsel for the State that he supplies heroin to large number of people for further reselling. Even otherwise also the learned counsel for the petitioner has not been able to make out any ground for making departure from the bar contained under Section 37 of the NDPS Act.

7. Consequently, finding no merit in the present petition, the same is, hereby, dismissed.

(JASGURPREET SINGH PURI)
JUDGE

14.12.2023

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No