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

**CRM-M-55276-2022
Date of Decision: 27.04.2023**

Amit Kumar @ Mota

..... Petitioner

Versus

State of U.T. Chandigarh

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. L.S. Bhullar, Advocate
for the petitioner.

Mr. A.M. Punchhi, P.P., U.T., Chandigarh.

HARSH BUNGER J. (ORAL)

1. Petitioner (Amit Kumar @ Mota) has filed the present petition under Section 439 of the Code of Criminal Procedure seeking grant of regular bail in case bearing FIR No.207 dated 31.08.2019 (Annexure P-1), under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, registered at Police Station East Sector-26, Chandigarh.

2. Custody certificate dated 26.04.2023 of the petitioner is filed by learned counsel for U.T., Chandigarh in Court today, which is taken on record, subject to all just exceptions.

3. Briefly, the aforesaid FIR was registered on the complaint of Sub Inspector Parvinder Singh, wherein he had stated that on 31.08.2019,

he along with other police officials apprehended the petitioner near House

No.175, Phase-III, Bapu Dham Colony, Sector-26, Chandigarh and recovered 5.65 grams of *heroin* along with small polythene pouch from his possession, without any licence and permit.

4. Thereafter, the petitioner was granted the concession of regular bail by the Court of Additional Sessions Judge, Chandigarh vide order dated 27.09.2019 (Annexure P-2). The challan in this case was presented on 04.12.2019.

5. It appears that on 19.05.2022, the petitioner did not reach the Court and consequently, bail of the petitioner was cancelled, his bail/surety bonds bonds were forfeited to the State and arrest warrants were also ordered to be issued against him by the trial Court vide order dated 19.05.2022 (Annexure P-3).

6. The petitioner was again arrested in this case on 17.09.2022. Thereafter, the petitioner again applied for regular bail, however, the same was dismissed by the Court of Additional Sessions Judge, Chandigarh vide order dated 14.11.2022 (Annexure P-5).

7. Learned counsel for the petitioner submits that the petitioner was allegedly arrested with 5.65 grams of *heroin* on 31.08.2019 and earlier he was granted regular bail on 27.09.2019. It is further submitted that the petitioner was attending the trial, however, on 19.05.2022, he could not appear before the trial Court as he had to go to Delhi to visit his relative, namely Bunty, who was admitted in the hospital and was in a critical condition. He submits that though the counsel representing the petitioner before the trial Court was informed about the said situation by the petitioner's mother, and he was asked to move an application seeking exemption of personal appearance of petitioner before the Court, however,

later on it came to the knowledge of the petitioner that no such application was moved by his earlier counsel. Learned counsel submits that there was no intention on the part of petitioner to delay the proceedings and his absence before the trial court was neither intentional nor deliberate but for the aforesaid reason. In fact, the said relative of petitioner (Bunty) later on died on 27.05.2022. His Death Certificate (Annexure P-6) is attached with the present petition. He contends that the petitioner was again arrested on 17.09.2022 and since then he is in custody, i.e. for a period of eight months and ten days (as on 26.04.2023) in the present case. Learned counsel submits that investigation in this case is complete, challan stands present and trial is going on. He submits that the alleged recovery in this case is 5.65 grams of *heroin*, which is a non-commercial quantity and thus bar under Section 37 of the Narcotic Drugs and Psychotropic Substances Act is not attracted. Learned counsel submits that the petitioner undertakes to appear on each and every date before the trial court and he is ready to abide by all the conditions as may be imposed by this Court or by the trial Court. Hence prayer for regular bail is made.

5. Learned counsel for U.T., Chandigarh opposes prayer of the petitioner for regular bail by stating that the petitioner had jumped the bail and had not followed the conditions of bail, thus petitioner is not entitled to any relief. He submits that as per custody certificate dated 26.04.2023, the petitioner is involved in two other cases, being FIR No.161 dated 25.09.2020, under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, registered at Police Station Sector-26, Chandigarh and FIR No.162 dated 20.08.2016, under Sections 363 and 366 of the Indian Penal Code, registered at Police Station Sector-26, Chandigarh, however, it is

fairly stated that the petitioner is on bail in both the cases. It is not disputed by learned counsel for U.T., Chandigarh that the petitioner is in custody for a period of eight months and ten days (as on 26.04.2023) in the present case. Learned counsel for U.T., Chandigarh also concedes the facts that investigation in this case is complete, challan stands submitted on 04.12.2019 and trial is going on.

6. I have heard the arguments of learned counsel for the petitioner as well as learned counsel for U.T., Chandigarh and have also perused the paper book as well as custody certificate of the petitioner.

7. In the present case, the petitioner was allegedly arrested with 5.65 grams of *heroin* and was earlier granted regular bail, however, his bail was cancelled on account of his non-appearance before the trial Court on 19.05.2022 for which it is the stand of petitioner that he had to urgently go to Delhi as one of his relative (Bunty) was ill, who later expired on 27.05.2022. Petitioner was again arrested on 17.09.2022 and since then he is in custody, i.e. for a period of eight months and ten days (as on 26.04.2023). The alleged recovery of 5.65 grams of *heroin* falls in category of 'non-commercial' quantity and the rigors of Section 37 of the Narcotic Drugs and Psychotropic Substances Act are not attracted. Trial in the case is likely to take some time to conclude and no useful purpose would be served by keeping the petitioner behind bars for indefinite period.

11. Keeping in view the aforementioned circumstances, the instant petition is allowed and the petitioner is ordered to be released on regular bail subject to his furnishing fresh bail/surety bonds to the satisfaction of the Chief Judicial Magistrate/Illaq Magistrate/Duty Magistrate concerned.

However, the concerned Station House Officer shall be informed about the

release of petitioner and the petitioner shall inform the concerned Station House Officer about his address at which he intends to reside during the pendency of case/trial and any change in the address shall be communicated to the concerned Station House Officer, forthwith. The petitioner would also furnish his telephone number to the concerned Station House Officer. He would also furnish his undertaking to the effect that he will not indulge in any illegal activity. The petitioner shall also appear before the concerned Police Station/Station House Officer on every alternate Monday till the conclusion of trial.

12. In addition, the petitioner (or anyone on his behalf) shall prepare a Fixed Deposit Receipt (F.D.R.) in the sum of Rs.20,000/- and submit the same with the trial Court. The same would be liable to be forfeited as per law, in case the petitioner remains absent from trial without any sufficient cause.

13. Nothing expressed hereinabove shall be construed to be an observation on merits of the case and the facts and circumstances recorded above are only for consideration of the prayer for bail at this stage.

14. The petition is accordingly disposed of.

27.04.2023
Apurva

(HARSH BUNGER)
JUDGE

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