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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-54824-2023

Date of Decision: 08.11.2023

Sher Ali @ Sheru

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Ruhani Chadha, Advocate
for the petitioner.

Mr. G.S.Sidhu, AAG, 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.69 dated 07.07.2023, under Sections 21 & 22 of the NDPS Act, registered at Police Station Sadar Pathankot, District Pathankot.

2. Learned counsel for the petitioner submitted that the petitioner is in custody since 07.07.2023 and the investigation of the case has already been completed and thereafter, the challan has also been presented before the competent Court. He further submitted that the petitioner is not involved in any other case under the NDPS Act but is involved in two more cases under the IPC. He also submitted that the alleged recovery from the petitioner was only 10 grams of *Heroin* and as per the prosecution story, the police on the spot had apprehended two

persons including the petitioner and from the petitioner there was an

alleged recovery of only 10 grams of *Heroin* which does not fall in the category of commercial quantity and is rather a small quantity. He further submitted that so far as the other co-accused is concerned, who was also apprehended on the spot, from whom there was an alleged recovery of 250 grams of *Heroin* but both the recovery cannot be treated as joint contraband in view of the fact that both of them were independent to each other. He also submitted that be that as it may, the bar contained under Section 37 of NDPS Act will not apply in the present case because there was no co-relation between the present petitioner and the co-accused.

3. On the other hand, Mr. G.S. Sidhu, learned AAG, Punjab stated that it is correct that the petitioner is in custody since 07.07.2023 and from his pocket there was a recovery of 10 grams of *Heroin*. He further submitted that since there was a recovery of 250 grams of *Heroin* from the other co-accused, the joint recovery would be more than the commercial quantity. So far as the antecedents of the petitioner is concerned, he also submitted that the petitioner is not involved in any other case under the NDPS Act but is involved in two more cases under the IPC.

4. I have heard learned counsels for the parties.

5. The petitioner is in custody since 07.07.2023 and the investigation of the case has already been completed and thereafter, challan has also been presented before the competent Court. A perusal of the FIR would show that two persons were apprehended and from the petitioner there was an alleged recovery of 10 grams of *Heroin* and 250 grams of *Heroin* independently from the other co-accused. The petitioner is stated to be not involved in any case under the NDPS Act. The alleged

recovery of 10 grams of *Heroin* from the petitioner does not fall in the

category of commercial quantity. The connection of the petitioner and other co-accused is yet to be seen at the time of trial.

6. Therefore, considering the aforesaid totality of the circumstances of the present case, this Court deems it fit and proper to grant regular bail to the petitioner. Consequently, 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.

08.11.2023
Bhumika

(JASGURPREET SINGH PURI)
JUDGE

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