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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Misc. No. M-654 of 2024 (O&M)
Date of Decision: March 13, 2024

Lovepreet Singh

.....Petitioner

versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR.JUSTICE HARPREET SINGH BRAR

Present:- Mr. Yashpal Thakur, Advocate
for the petitioner

Mr. Sandeep Kumar, DAG Punjab

Harpreet Singh Brar, J. (Oral)

CRM-471-2024

Application is allowed as prayed for.

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1. This is the first petition filed under Section 439 of Cr.P.C. seeking grant of regular bail to the petitioner in the case bearing FIR No. 292 dated 09.10.2023 registered under Sections 21(c), 29 of NDPS Act, 1985 at Police Station City Tarn Taran, District Tarn Taran, Punjab.

2. As per the case of the prosecution, the present FIR was registered on the allegations that on 09.10.2023 the petitioner along with co-accused namely Sonu Singh alias Sonu were intercepted by the police party while they were seen coming walking at around 12.25 A.M. midnight while carrying bags on their shoulders. On seeing the police party they both got perplexed and turned back. On suspicion they were arrested and upon search of the polythene bag recovered from applicant/accused it was found to contain

Heroin which upon weighment came out to be total 150 grams of Heroin and drug money amounting to Rs.6,000/- was also recovered Upon search of the polythene bag recovered from the co-accused namely Sonu it was found to contain Heroin which upon weighment came out to be total 350 grams of heroin and drug money amounting to Rs, 14,000/-.

3. Learned counsel for the petitioner *inter alia* contends that admittedly the alleged recovery from the petitioner does not fall under the ambit of commercial quantity and as such the embargo created by Section 37 of the NDPS Act would not be applicable. He relies upon judgment passed in ***Amar Singh Ramjibhai Barot vs. State of Gujrat, 2005(7) SCC 550***. It is further contended that that in view of the ratio of law laid down in ***Amar Singh Ramjibhai Barot(supra)*** if two accused are found together carrying contraband, then quantity of contraband carried by both the accused could not be added to bring it within the meaning of the commercial quantity. The petitioner is behind the bars since 09.10.2023.

4. Per contra, learned State counsel opposes the grant of regular bail to the petitioner on the ground that the petitioner was caught while carrying the contraband and he is habitual offender and is involved in one more case under the NDPS Act.

5. Having heard learned counsel for the parties and after perusing the record of the case, it transpires that the petitioner is behind the bars since 09.10.2023. So further incarceration of the petitioner without there being the prospect of the conclusion of the trial in the near future, would be violative of Article 21 of the Constitution of India. Culpability, if any, would be determined at the time of trial.

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6. Keeping in view the law laid down by Hon'ble Supreme Court of India in '*Prabhakar Tewari Vs. State of U.P. and Another*', 2020 (1) R.C.R. (Criminal) 831 and *Maulana Mohd. Amir Rashadi vs. State of U.P. and others*, 2012(2) SCC 382, the involvement of the petitioner in other cases would not be a ground to refuse grant of concession of regular bail.
7. In view of the above, the present petition is allowed and petitioner-Lovepreet Singh is ordered to be released on regular bail subject to his furnishing requisite bail bonds/surety bonds to the satisfaction of the concerned trial Court/Chief Judicial Magistrate/Duty Magistrate.
8. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and the trial Court shall proceed without being prejudiced by observations of this Court.

(HARPREET SINGH BRAR)
JUDGE

March 13, 2024
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Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No