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

CRM-M-3970-2024 (O&M)

Date of Decision: 05.07.2024

Gurvishal Singh @ Vishal Singh

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Subhbir Mandi, Advocate
for the petitioner.

Mr. A.S. Pannu, AAG, Punjab.

JASGURPREET SINGH PURI, J. (ORAL)**CRM-20078-2024**

For the reasons mentioned in the application, the same is allowed and the order dated 01.05.2024 as Annexure P-7 is taken on record, subject to all just exceptions.

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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.210, dated 18.07.2023, under Sections 21(c) & 29 of the NDPS Act, 1985, registered at Police Station Special Task Force, District SAS Nagar.

2. Learned counsel for the petitioner submitted that it is a case where the allegations are that the petitioner along with other co-accused was caught by the police on 18.07.2023 at about 4 p.m. when they were travelling in a car and total contraband weighing 800 grams of *Heroin* was recovered from all the four accused including the present petitioner. He further submitted that so far



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as the petitioner, who was sitting next to the driver, is concerned, the allegations against him are with regard to recovery of 260 grams of *Heroin* from his pocket. He also submitted that in fact the entire police story is a concocted one and a false case has been planted upon the petitioner. He further submitted that the petitioner is having clean antecedents and is not involved in any other case and it is a case of pure false implication of the petitioner at the hands of the police because of the political enmity. On the grounds of the false implication, learned counsel for the petitioner submitted that vide order dated 01.04.2024, this Court had directed the State to verify the averments made in the petition along with the photographs attached with regard to the false implication and the Assistant Inspector General of Police has filed an affidavit with regard to the same. While referring to Annexure P-3 attached with the present petition and affidavit filed by the aforesaid Police Officer, he submitted that a perusal of the aforesaid photographs would show that the petitioner along with one of the other co-accused was riding a motorcycle on the same date i.e. on 18.07.2024 at 16:06:29 which is so incorporated in the aforesaid photographs and the aforesaid photographs of the CCTV footage have not been disputed by the police. He submitted that the aforesaid photographs are of a place which is opposite to a shop i.e. Swag Clothes Shop, Amritsar. He submitted that even in the affidavit which has been filed by the Assistant Inspector General of Police, it has been so stated that although the time shown in the aforesaid CCTV footage photographs is around 4 p.m. on the aforesaid date but there can always be a difference of time because they were arrested from a car at the same time which is at about 4 p.m. Learned counsel for the petitioner further submitted that it is highly improbable that on one hand at the



aforesaid time, the petitioner is seen on the motorcycle at the same place i.e. opposite to the Swag Clothes Shop and the story which has been put forward by the police in the FIR is that around the aforesaid time they were coming from Jalandhar side in a car and they have been arrested at the aforesaid place because if admittedly the petitioner and the other co-accused were on motorcycle at the aforesaid point of time at the aforesaid particular place, where as per the FIR, a *Naka* consisting of a large number of police officials were present, it is impossible that at the same time the petitioner along with other co-accused would have gone on a motorcycle and would have come back by a car at the same place where the police had made a *Naka* and therefore, on the face of it, it is a concocted story by the police for falsely implicating the petitioner. He further submitted that be that as it may, it is a case where the petitioner is having clean antecedents and the allegations against the petitioner are with regard to recovery of 260 grams of *heroin* from his pocket which is marginally higher than the commercial quantity because as per the NDPS Act, the commercial quantity of *Heroin* is 250 grams which also goes to show that the marginally higher quantity of *Heroin* has been shown to be recovered from the petitioner so as to put the recovery in the category of commercial quantity.

3. Learned counsel for the petitioner further submitted that the petitioner is a young student, who has completed his Bachelors and is doing his Masters and for the purpose of appearing in 5th Semester exams and thereafter to take admission in M.C.A., he had sought interim bail from this Court for two time and both the time he was granted interim bail for a particular period of time and thereafter he surrendered well in time before the Jail Authorities in accordance with the directions issued by this Court and it is not a case of the



State that the petitioner has violated any of the conditions of the interim bail or he has jumped the bail.

4. Learned counsel for the petitioner has further argued that the charges in the present case were framed on 30.01.2024 which is more than five months ago but till date not even a single prosecution witness has been examined for the reasons best known to the prosecution itself. He submitted that an application was filed before the learned trial Court for the purpose of preservation of mobile numbers of the police party which are shown to be there as per the FIR and also for the preservation of the CCTV footage and the aforesaid order for preservation of the aforesaid was passed on 01.05.2024 vide Annexure P-7, but as per his information, the aforesaid order has not been complied with by the police and the CCTV data has not be retrieved nor the mobile numbers have been preserved.

5. Learned counsel for the petitioner further submitted that in light of the aforesaid peculiar facts and circumstances of the present case, the bar contained under Section 37 of the NDPS Act will not apply to the petitioner particularly because it is a case where the petitioner has been falsely implicated. He also submitted that his entire career will be ruined in case his custody is elongated and if he is put to further incarceration and also in view of the fact that he has clean antecedent and is not involved in any other case whatsoever.

6. On the other hand, Mr. A.S. Pannu, learned AAG, Punjab, on instructions from ASI Manoj Kumar, submitted that so far as the custody of the petitioner is concerned, he is in custody for about 11 months after deducting the period of interim bails granted to him. He further submitted that the charges



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in the present case were framed on 30.01.2024 but till date no prosecution witness has been examined and it is also correct that the petitioner is having clean antecedents and is not involved in any other case. So far as the allegation of false implication of the petitioner is concerned, he referred to the affidavit filed by the Assistant Inspector General of Police by stating that nothing can be presumed from the aforesaid photographs that even after same period and same time the petitioner could not have come in a car around that time because the exact time cannot be ascertained and it is only a matter of evidence as to at what time they had come by a car from where the recovery has been effected which can only be seen at the time of trial. He submitted that from the pocket of the petitioner, there has been a recovery of 260 grams of *heroin* which falls in the category of commercial quantity and therefore, the petitioner is not entitled for the concession of regular bail.

7. Learned State Counsel has also stated that he has sought specific instructions from the aforesaid police officials, who is present in the Court, to state that although an order was passed by the learned trial Court on 01.05.2024 vide Annexure P-7 for preservation and retrieving of the CCTV footage of the site regarding which the photographs have been attached but the preservation of the mobile numbers of the police party, has not been done till date. He submitted that so far as the CCTV footage is concerned, the same could not be retrieved because the data has elapsed and so far as the preservation of the mobile numbers of the police party is concerned, the same also could not be preserved because the police officials, who were a part of the police party, were engaged in some other sensitive cases.

8. I have heard the learned counsels for the parties.



9. It is a case where the petitioner is in custody for 11 months and was earlier granted interim bail twice by this Court for the purpose of appearing in 5th Semester exams and for taking admission in MCA because he is stated to be a student. Both the learned counsels for the parties have stated that after availing the benefit of interim bail, the petitioner surrendered well in time and has not violated any of the condition of the bail. The charges in the present case were framed on 30.01.2024 but as per the learned counsel for the parties, not even a single witness has been examined till date.

10. The petitioner in the present case has elaborately alleged false implication on the basis of photographs attached vide Annexure P-3 and on the basis of the stand taken by the police in the affidavit filed by them. Learned counsel for the petitioner has laid much emphasis on the orders passed by the learned trial Court wherein the CCTV footage and the mobile numbers of the concerned police officials were directed to be preserved but as per the learned State Counsel, the aforesaid order has not been complied with because of whatever reason which has been given by the police in this regard. This Court does not wish to make any observation with regard to the fact that as to whether the petitioner has been falsely implicated or not because it is a matter of evidence which can only be seen at the time of trial but looking at the aforesaid sequence of events and the allegations, only for the purpose of considering the grant of regular bail, the aforesaid possibility cannot be ignored. It is again made clear at the cost of repetition that any observation made in the order shall not be treated as an expression of opinion on the merits of the case and it is only meant for the purpose of deciding the bail petition of the petitioner.



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11. The petitioner is a student and for twice he had sought interim bail from this Court first time for appearing in 5th Semester exams and thereafter for taking admission in M.C.A. The alleged recovery from the petitioner is stated to be 260 grams of *Heroin* which is marginally higher than the commercial quantity. The petitioner is not a habitual offender. During the course of arguments, a specific query was also raised to the learned State counsel as to why no prosecution witness has been examined even after a lapse of more than six months to which he could not offer any explanation.

12. Therefore, this Court is of the considered view that the bar contained under Section 37 of the NDPS Act will not apply to the present petitioner in the light of Article 21 of the Constitution of India and in the light of the peculiar facts and circumstances as aforesaid. 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.

13. 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.

05.07.2024

Bhumika

(JASGURPREET SINGH PURI)
JUDGE

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