

CRM-M-8242-2023
Date of decision: 15.01.2024

...PETITIONER

V/S

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Kshitiz Goel, Advocate for
Mr. Vishal Mittal, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR J. (ORAL)

This is the first petition filed under Section 439 of Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No.151 dated 16.07.2022 registered under Section 18 of Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Kotwali Patiala, District Patiala, Punjab.

2. The present FIR was lodged on the allegations that on 16.07.2022, the police party headed by SI Mewa Singh was patrolling in the area of Dhobi Ghat, Patiala and 2.6 kilograms of Opium was recovered from the polythene envelope thrown by the petitioner.

3. Learned counsel for the petitioner *inter alia* contends that the petitioner has been falsely implicated in the present case. None of the safeguards as provided under the NDPS Act have been adhered to and the petitioner is behind the bars since 16.07.2022. The trial of the case is progressing at snail's pace and the alleged recovery of contraband from the

petitioner is marginally higher than the commercial quantity. Reliance in this regard has been placed in the case of ***Ranjit Singh @ Ranjit Kumar Vs. State of Punjab*** bearing ***CRM-M No.57485 of 2022*** decided on 10.01.2023. The petitioner therein was granted concession of regular bail in which, identical recovery of 2.6 kilograms of opium was made. Similarly, in the cases of ***Gurpreet Kumar Vs. State of Punjab 2021(2) DC (Narcotics) 862, Jang Kanwar Vs. State of Punjab*** bearing ***CRM-M No.53415 of 2021*** decided on 19.01.2022, the accused were granted bail by this Court where recovery was of 2.6 and 2.7 kilograms of Opium respectively.

4. Per contra, the learned State counsel, on instructions from ASI Sukha Singh, opposes the prayer of grant of regular bail to the petitioner on the ground that commercial quantity of Opium was recovered from the conscious possession of the petitioner. As such, embargo under Section 37 of the NDPS Act would apply and the petitioner is not entitled to the concession of regular bail, however, learned State counsel could not controvert the fact that petitioner is a first time offender and the alleged recovery of Opium is marginally above the commercial quantity.

5. Having heard the learned counsel for the parties and after perusing the record of the case, it transpires that the petitioner is behind the bars since 16.07.2022. Trial of the case has not made any progress yet as out of 10 witnesses cited by the prosecution, only 02 have been examined so far. Culpability, if any, would be determined at the time of the trial. No useful purpose would be served by further detention of the accused-petitioner. Keeping the petitioner in further detention, without the prospect of the trial being concluded in the near future, would be violative of his rights under Article 21 of the Constitution of India.

6. Keeping in view the recovery of the petitioner i.e. 2.6 kilograms of Opium, which is marginally higher from the commercial quantity and the judicial precedents cited by the learned counsel for the petitioner, the present petition is allowed without commenting upon the merits of the case lest it may prejudice the outcome of the trial and the petitioner-Harjeet Singh @ Sonu is ordered to be released on regular bail during trial on his furnishing bail bonds/surety bonds to the satisfaction of Illaqa Magistrate/Trial Court.

7. 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.

January 15, 2024
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(HARPREET SINGH BRAR)
JUDGE

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| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |