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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
(224)

CRM-M-11466-2024 (O & M)
Date of decision: 22.07.2024

Jiyaul Petitioner
V/s
State of Haryana ...Respondent

CORAM: HON’BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Rajiv Kumar Saini, Advocate,
for the petitioner.

Mr. Parveen Kumar Aggarwal, DAG, Haryana.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 439 Cr.P.C. is for the grant of regular bail to the petitioner in case FIR No.441 dated 15.08.2023 under Sections 21, 25 of the NDPS Act, 1985 registered at Police Station Sector 32-33, Karnal.

2. The brief facts of the case are that the petitioner-Jiyaul son of Ishatyak came to be apprehended with 260 grams of heroin. He suffered his disclosure statement to the effect that he had purchased the said contraband from his co-accused/Furkan @ Furkan Rana @ Master son of Yamin.
3. The learned counsel for the petitioner contends that taking the allegations to be correct, the recovery from the petitioner was 260 grams of heroin which was marginally above the commercial quantity of 250 grams of heroin. Since the recovery was marginally above the commercial quantity of 250 grams, the petitioner was a first-time offender, in custody since



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15.08.2023 and none of the 18 prosecution witnesses had been examined so far, he was entitled to the grant of bail.

4. The learned counsel for the State, on the other hand, contends that the offences of this kind are on the rise and commercial quantity of contraband has been recovered from the accused because of which Section 37 of the Act would be a bar to the grant of bail. He, however, concedes that the petitioner was a first-time offender, in custody since 15.08.2023 and none of the 18 prosecution witnesses had been examined so far.

5. I have heard the learned counsel for the parties.

6. In the cases of 'Sukhchain Singh @ Manga Versus State of Punjab, CRM-M-7857-2022 decided on 04.04.2022, Pardeep Singh versus State of Punjab, CRM-M-46244-2022 decided on 19.01.2023, Hari Yadav @ Haiya versus State of Punjab (CRM-M-37645-2021) decided on 11.11.2022, Jang Kanwar Versus State of Punjab (CRM-M-53415-2021) decided on 19.01.2022, Shankar Prashad Chanau Versus The State of Punjab, CRM-M-24090-2020, decided on 27.08.2020, Gurpreet Kumar Versus State of Punjab, CRM-M-17021-2021, decided on 31.08.2021, Salim Versus State of Haryana, CRM-M-42436-2020, decided on 24.02.2021, Gagandeep Versus State of Punjab, CRM-M-3055-2021, decided on 27.01.2021, Gurpreet Singh @ Gopi Versus State of Punjab, CRM-M-41039-2019, decided on 26.02.2020, Dalbara Singh Versus State of Punjab, CRM-M-47880-2022 decided on 16.01.2023, and Vivek Watts versus State of Punjab, CRM-M-13791-2022 decided on 15.02.2023, where the recovery from the accused was marginally above the commercial quantity for the respective contraband in each case, the Court granted bail to the accused therein.



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7. In the present case, the alleged recovery from the petitioner is of 260 grams of heroin, which is marginally above the commercial quantity of 250 grams of heroin. The petitioner is a first time offender with no other case under the NDPS Act has been registered against him. In this situation, the provisions of Section 37 of the NDPS Act can be relaxed to an extent and the case of the petitioner can be considered for the grant of bail, moreso, when he is in custody since 15.08.2023 and none of the 18 prosecution witnesses have been examined so far.

8. Thus, without commenting upon the merits of the case, the present petition is allowed and the petitioner, namely, Jiyaul is ordered to be released on bail to the satisfaction of the Trial Court/Duty Magistrate concerned.

9. The petitioner shall appear on the first Monday of every month before the police station concerned till the conclusion of the trial and furnish an affidavit each time that he is not involved in any other case except the present one.

10. In addition, the petitioner (or anyone on his behalf) shall prepare an FDR in the sum of Rs.50,000/- and deposit the same with the Trial Court. The same would be liable to be forfeited as per law in case of the absence of the petitioner from Trial without sufficient cause.

(JASJIT SINGH BEDI)
JUDGE

July 22, 2024

sukhpreet

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No