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

CRM-M-21227-2024

Date of decision : 01.10.2024

Nirmal Singh**.....Petitioner****versus****State of Punjab****..... Respondent****CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ**

Present :- Mr. Tushar Kumar, Advocate
for the petitioner.

Mr. Tarun Aggarwal, Sr. D.A.G., Punjab.

RAJESH BHARDWAJ, J. (Oral)

1. Present petition has been filed by the petitioner under Section 439 Cr.P.C. praying for grant of regular bail in case FIR No.4 dated 18.01.2024, under Section 21(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station Kabirpur (Ahlikalan), District Kapurthala.

2. Succinctly, the facts of the case are that on 18.01.2024, the Police party while on patrolling spotted one person with a heavy bag and on seeing the police he threw the bag and turned back. On suspicion, he was apprehended. On asking, he disclosed his name as Nirmal Singh (petitioner). The bag thrown by the petitioner was searched and 118 grams of heroin was recovered from the same. The petitioner/accused failed to produce any licence for possession of the same and thus, the FIR was registered and he was arrested on the spot. The samples were taken and sent to the FSL. Then investigation commenced. Thereafter, the petitioner



approached the Learned Judge, Special Court, Kapurthala for grant of bail, however, after hearing both the sides, the same was declined by the Learned Judge, Special Court, Kapurthala vide order dated 20.03.2024. Aggrieved by the same, the petitioner is before this Court by way of filing the present petition.

3. It has been contended by counsel for the petitioner that petitioner has been falsely implicated in the present case. It is submitted that the alleged recovery was made at a public place, however, no public witness was joined by the investigating agencies. He submits that there is a gross violation of mandatory provision of Section 50 of the NDPS Act. He submits that even otherwise the alleged recovery effected from the petitioner is 118 grams of heroin which falls under the non-commercial quantity and thus, the provisions of Section 37 of the NDPS Act are not attracted. He further submits that though the petitioner is falsely implicated in 05 other cases as well, however, he is on bail in those cases as the same also pertains to the alleged recovery of non-commercial quantity. He submits that in the facts and circumstances of the present case, petitioner deserves to be granted regular bail.

4. Per contra, learned State counsel has opposed the submissions made by counsel for the petitioner and has submitted that the recovery was effected after due compliance of statutory provisions of Section 50 of the NDPS Act. The recovery which was effected from the petitioner is 118 grams of heroin. He submits that the petitioner is a habitual offender and he is facing prosecution in 05 other cases and thus, the petitioner does not deserve to be granted bail.

5. Heard. On hearing counsel for the parties and perusing the record, it is apparent that as per case of the prosecution the recovery was



effected from the bag of the petitioner which is 118 grams of heroin which admittedly falls under the non-commercial quantity Though the petitioner is facing prosecution in 05 other cases but as per custody certificate, he is on bail in all those cases as the quantity is said to be non-commercial in all those cases. It is submitted by counsel for the State that challan is presented and charges are framed, however, out of total 09 prosecution witnesses, no prosecution witness has been examined. Needless to say that provisions of Section 37 of the NDPS Act are not applicable, the quantity being non-commercial.

6. The veracity of the allegations would be assessed only after the conclusion of the trial and on the appreciation of evidence to be led by both the parties before the trial Court. The trial of the case will take sufficiently long time. Thus, keeping in view the overall facts and circumstances of the case, this Court is of the opinion that learned counsel for the petitioner succeeds in making out a case for grant of regular bail. Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the concerned Court/Duty Magistrate. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

(RAJESH BHARDWAJ)
JUDGE

01.10.2024
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No