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

Sr. No.234

**CRM-M-23439-2024 (O&M)
Date of decision : 17.12.2024**

Rajeev Yadav @ Rajbir

..... Petitioner

VERSUS

State of Punjab

..... Respondent

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Mr. Ruhani Chadha, Advocate, for the petitioner.

Mr. Vinay Kumar Malhotra, DAG, Punjab.

KIRTI SINGH, J. (Oral)

The jurisdiction of this Court under Section 439 Cr.P.C. has been invoked for grant of regular bail to the petitioner in case FIR No.152 dated 29.10.2023, registered under Section 21 of the NDPS Act, 1985 at Police Station Meharban, District Ludhiana.

2. The translated version of the FIR is reproduced below:-

“Station House Officer, PS Meharban, Jai Hind. Today I ASI along with ASI Surjit Singh No. 2155/LDH, C- Barinder Singh No. 117/LDH, HC Gopal No. 3346/LDH, S. Talwinder Singh No. 3161/LDH and PHG Joginder Singh No. 19726 were patrolling on our private vehicle in search of bad and suspicious elements and suspicious vehicle and drugs smugglers and we during patrolling were going from Rahon road to Village Kakka side and when the police party reached near the empty and unauthorized colonies, then from the opposite side one young person who on Jupiter color white was seen coming and the said young person on seeing the police party coming towards him got perplexed and the above said young person got out one heavy polythene from his right pocket of his trouser which he was wearing and threw the same on the comer side of the road and turned his Activa backwards and tried to run towards Village Kakka and due to the high speed of the Activa and due to the bad conditions of the road the active got slipped. Then the SI along with the police officials by brining the said person out of the private vehicle with the help of the other police officials and apprehended him and asked

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him about his name and address. On being asked, the said person disclosed his name as Rajeev Yadav alias Rajbir son of Ashok Yadav resident of Street No. 2 Back colony near Lal Kothi, Vaddi Haibowal Ludhiana. Then ASI gave a notice under Section 50 of the NDPS Act to Rajeev Yadav alias Rajbir son of Ashok Yadav resident of above said and through notice asked him that he is having suspicion that the transparent polythene which you had thrown is having some intoxicant substances or some other substances, because of the said the transparent polythene which is being thrown by you, Aactiva number color white and your search needs to be conducted. But you are having the legal right that you can get your and the transparent polythene which is thrown by you search from Gazetted Officer or Magistrate. They can be called at the spot without any delay. On this Rajeev Yadav alias Rajbir son of Ashok Yadav resident of above said and the notice which was being given by ASI and on which accused Rajeev Yadav alias Rajbir signed in hindi and gave his consent that he wants to get the search of transparent polythene which is being thrown by him from ASI and on the notice witnesses affixed their signatures Then ASI before searching accused Rajeev Yadav alias Rajbir Yadav tried to join 5 to 6 passerby from the public as police party, but everyone showed their helplessness and no one became as a private independent witness. Then ASI in the presence of government witnesses conducted the search of accused Rajeev Yadav alias Rajbir Yadav and the transparent heavy polythene which was being thrown by him and he was also wants to pick up the same and after opening the same and as per his experience, the same contained heroin. Then the recovered heroin was being weighed by ASI on electronic weighing machine which was bought out from the investigating bag and the weight of the same came out to be 260 grams of heroin and then ASI also conducted the personal search of accused Rajeev Yadav alias Rajbir and from the trouser which he was wearing and from his left pocket one black color polythene in which 500-500 Rupees 120 notes, 100/100 rupees 15 notes and 20/20 rupees 7 notes and on counting the total, the same came out to be Rs. 61640/- Indian currency drug money and two small packets in Zip and one electronic weighing machine was recovered. Then ASI put the recovered heroin in the same polythene and then in one plastic box and then the plastic box was being put in the piece of cloth and parcel of heroin was prepared and the recovered amount of Rs. 61,640/- Indian currency Drug Money, two small packets of polythene and one electronic weighing machine was being put in a separate piece of cloth and a parcel was being prepared. On the said parcel ASI affixed his seal HL and parcels were prepared in four types and ASI after affixing his seal handed over the same to ASI Surjit Singh No. 2155/LDH. ASI took the

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parcel of heroin weighing 260 grams having seal HL along with parcel seal HL of four types and took the same into his possession and the recovered amount of Rs. 61640/- Indian Currency Drug money, two small packets polythene and one electronic weighing machine along with proof and took the same into police possession. On the memo the witnesses affixed their signatures. Then ASI also took the Jupiter scooter bearing PB 10 F 0684 and asked the accused Rajeev Yadav alias Rajbir about the ownership of the same and in this regard accused Rajeev Yadav alias Rajvir could not produce any document or give any reasonable answer Then the said Jupiter Scooter bearing no. above said was being searched and the said Jupiter Scooter bearing no PB 10 F 0684 color white was taken into police possession On the memo witness affixed their signatures. Accused Rajeev Yadav alias Rajvir son of Ashok Yadav resident of above said for keeping in his possession 260 grams of heroin, two small packets of polythene, one electronic weighing machine and total 61640 Indian Currency drug money has committed an offence under Section 21-8, 61- 85 NDPS Act. After registering the Ruqa against accused Rajeev Yadav alias Rajvir, the same is being sent to the police station at the hands of constable C Talwinder Singh No. 3161/LDH after getting the same typed on the private laptop and getting the print out of the same as the printer was being installed in the private vehicle and the same is being sent at the hands of of PHG Joginder Singh no. 19726 for registration of FIR. After preparing the report under section 57 of NDPS Act, the same be sent to ACP East and other police officers at the hands of HC Gopal No 3346/LDH. After registering the FIR, the number may be intimated, the control room be intimated through wireless and special reports be prepared and sent to Illaqa Magistrate and Senior Police Officers. I ASI along with other police officers are present at the spot. Sd/- Husan Lal ASI P.S. Meharban, Ludhiana dated 29.10.2023. Area near Village Kakka Rahon Road. Ludhiana at 8.10 PM.”

3. Learned counsel for the petitioner *inter alia* submits that the petitioner has clean antecedents and has undergone an actual custody of 01 year, 01 month and 14 days. The alleged recovery of 260 grams of heroin is marginally higher than the commercial quantity. He has further relied upon orders passed in CRM-M-16187-2024 titled as Sukhraj Singh @ Raju Vs. State of Punjab, decided on 26.09.2024,

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CRM-M-12321-2023 titled as Rudra Nanda @ Bablu Khatri Vs. State of Punjab, decided on 13.07.2023 and CRM-M-51690-2022 titled as Satnam Singh @ Satta Vs. State of Punjab decided on 25.07.2023.

4. *Per contra*, learned State counsel has vehemently opposed the submissions made by the learned counsel for the petitioner. He contends that the offences of this kind are on the rise and commercial quantity of contraband has been recovered from the petitioner because of which Section 37 of the NDPS Act would be a bar to the grant of bail. He has filed custody certificate in Court today and the same is taken on record. As per the custody certificate, the petitioner has undergone an actual custody of 01 year, 01 month and 14 days and is not involved in other criminal case. He on instructions from ASI-Hussan Lal submits that the challan has been presented on 24.01.2024 and the charges have been framed on 05.07.2024 and out of 15 prosecution witnesses, 02 witnesses have been examined and 01 witness has been given up. He, however, submits that there are serious allegations against the petitioner, therefore, he is not entitled to the concession of regular bail.

5. Heard the rival submissions made by 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***

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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-petitioner(s) was marginally above the commercial quantity for the respective contraband in each case, the Court granted bail to the accused-petitioner(s) therein.

7. In the present case, the alleged recovery from the petitioner is of 260 grams of heroin, which is marginally higher than the commercial quantity. 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 02.11.2023.

8. The veracity of the allegations leveled against the petitioner shall be established during the course of the trial. The petitioner has undergone an actual custody of 01 year, 01 month and 14 days. Admittedly, charges have been framed on 05.07.2024 and out of 15 prosecution witnesses, 02 witnesses have been examined and 01 witness has been given up. The alleged recovery of 260 grams of heroin is marginally higher than the commercial quantity.

9. Without commenting anything on the merits of the case, lest it may prejudice the trial, the present petition is allowed and the petitioner is

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ordered to be released on regular bail on his furnishing adequate bail/surety bonds to the satisfaction of the concerned learned trial Court/Duty Magistrate. The petitioner shall also abide by the following conditions:-

- (i) The petitioner will not tamper with the evidence during the trial.
- (ii) The petitioner will not pressurize/intimidate the prosecution witness(s).
- (iii) The petitioner will appear before the trial Court on the date fixed, unless personal presence is exempted.
- (iv) The petitioner shall not commit an offence similar to the offence of which he is accused of, or for commission of which he is suspected.
- (v) The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

10. In case of breach of any of the above conditions, the prosecution shall be at liberty to move an application for cancellation of bail before this Court.

11. However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial Court would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

Pending miscellaneous application(s), if any, also stands disposed of.

(KIRTI SINGH)
JUDGE

17.12.2024

Ramandeep Singh

Whether speaking / reasoned
Whether Reportable

Yes/No
Yes/No