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

**CRM-M No.50141 of 2023
Date of decision: 12.08.2024**

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

Present: Mr. Ravi Malhotra, Advocate
for the petitioner.

Mr. Tarun Aggarwal, Sr. DAG, Punjab.

RAJESH BHARDWAJ J.

1. Present petition has been filed under Section 439 Cr.P.C. for grant of regular bail pending trial to the petitioner in case FIR No.203, dated 13.07.2023, under Sections 21-C/29 of NDPS Act, 1985, registered at Police Station STF Wing, District STF Wing.

2. Succinctly the facts of the case are that on 13.07.2023, the police party while checking the vehicles in routine at about 3.50 p.m., saw two young persons coming on the motorcycle make Splendor Plus. They were given a signal to stop but they tried to turn their motorcycle towards back but the motorcycle slipped. Thus both of them were apprehended by the police party. They were suspected to be carrying some contraband. On their asking, the motorcyclist disclosed his name as Jiwan Jyoti, son of



Late Tarsem Lal and the pillion rider disclosed his identity as Mohit, son of Kewal Krishan. Then the offer under Section 50 of NDPS Act was given. On conducting the personal search of Jiwan Jyoti (petitioner), 50 grams of heroin was recovered from his right pocket of the pant whereas from the right pocket of the pant of Mohit, 260 grams of heroin was recovered, thus, total 310 grams of heroin was recovered from both of them. They failed to produce any licence regarding the conscious possession of the same and thus, the FIR was registered and both of them were arrested at the spot. On registration of the FIR, the investigation commenced. The samples of the contraband were sent to the FSL. The petitioner approached the Court of learned Judge, Special Court, Jalandhar praying for the grant of bail. However after hearing both the sides, the same was declined by the learned Judge, Special Court, Jalandhar vide his order dated 23.08.2023. Hence being aggrieved the petitioner is before this Court by way of filing the present petition for grant of bail.

3. Learned counsel for the petitioner has vehemently contended that the petitioner has been falsely implicated in this case. The precise submission made by learned counsel for the petitioner is that the recovery effected from the right pocket of pant of petitioner is 50 grams of heroin, which is non commercial quantity, however the same has been added with the recovery effected from the co-accused, which is of 260 grams heroin and thus, the petitioner is being prosecuted for the recovery of a commercial quantity, which is unsustainable in the eyes of law. He relies upon the judgment passed by this Court in “*Sukhdev Singh vs. State of Punjab*”, CRM-M No.53872 of 2021, decided on 27.04.2022 and



submits that the view taken by the learned Judge, Special Court in declining the bail petition filed by the petitioner considering the recovery of contraband of commercial quantity is illegal and thus, the petitioner deserves to be granted bail.

4. *Per contra*, learned counsel for the State has vehemently opposed the submissions made by learned counsel for the petitioner. He has submitted that both the accused were arrested on the spot while they were coming on the motorcycle. He submits that from the personal search of petitioner, 50 grams of heroin was recovered whereas from that of the co-accused, it was 260 grams. Thus, from both of them, 310 grams of heroin was recovered. Hence the petitioner is liable to be prosecuted for the total amount of contraband i.e. 310 grams recovered from both of them and hence the learned Judge, Special Court has committed no illegality in declining their bail petition. He has submitted that the challan has been presented and the charges were framed.

5. The Court has heard learned counsel for the parties and perused the record.

6. It is deciphered from the facts and circumstances of the case that the petitioner along with the co-accused was arrested by the police while they were coming on motorcycle. The petitioner was driving the motorcycle whereas the co-accused, namely, Mohit was riding pillion. On conducting their personal search, 50 grams of heroin was recovered from the right pocket of the pant of petitioner whereas 260 grams of heroin was recovered from the co-accused, Mohit. Challan was presented and charges were also framed.



7. Needless to say, both the petitioners were on the same motorcycle. The facts and circumstances of the case relied upon by learned counsel for the petitioner are different from the facts of the present case. In the case relied upon by learned counsel for the petitioner, two accused had alighted from a three wheeler scooter with bags on their shoulder. However in the present case, both the accused were on the motorcycle and thus, the arguments raised by learned counsel for the petitioner can be appreciated after completion of the evidence to be led by both the parties before the learned trial Court.

8. Thus this Court would refrain itself from commenting anything on the merits of the case at this stage. This Court finds that the petitioner does not qualify for the grant of bail at this stage. Thus, the petition being devoid of any merit is hereby dismissed. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

(RAJESH BHARDWAJ)
JUDGE

12.08.2024
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No