

2024:PHHC:161620



IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

223

CRM-M-48959-2024 (O&M)
Date of decision: 04.12.2024

Jaswinder Sidhu

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Kulwinder Singh Dhillon, Advocate
for the petitioner.

Mr. A. S. Samra, AAG, Punjab.

MANISHA BATRA, J. (Oral)

1. The instant one is the second petition that has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case arising out of FIR No. 136 dated 24.11.2022, registered under Sections 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (*for short 'NDPS Act'*) at Police Station Chabbewal, District Hoshiarpur. The first petition, bearing number **CRM-M-34950-2023**, was dismissed as withdrawn on 03.07.2024.
2. Brief facts of the case relevant for the disposal of the present petition are that on 24.11.2022, when a police party headed by SI Joginder Singh was on patrolling duty, a person was seen coming from Sant Market side who was carrying a black color polythene in his right hand. On seeing the police party, he threw the said polythene bag on the ground and tried to

2024:PHHC:161620



run from the spot. However, he was apprehended by the police. On inquiry, he disclosed his name as Jaswinder Sindhu, who is the present petitioner. Thereafter, on the basis of suspicion, he was apprehended and was given a notice under Section 50 of the NDPS Act with an option to be searched either before a Gazetted Officer or a Magistrate, on which, he reposed faith in the Investigating Officer and a consent memo was prepared. On search of the said polythene bag, recovery of 253 grams of heroin was effected, which falls under the commercial quantity. The petitioner was formally arrested at the spot. After completion of necessary investigation and usual formalities, challan was presented in the Court and presently, the petitioner along with the co-accused is facing trial for commission of aforesaid mentioned offences. He had moved an application before the trial Court for grant of regular bail but the same had been dismissed, vide order dated 04.03.2023.

3. Learned counsel further submits that the petitioner has been falsely implicated in this case. Mandatory provisions of Sections 42 and 50 of the NDPS Act were not followed. No independent witness was joined by the police. The petitioner is in judicial custody since 24.11.2022. Investigation has since been completed and challan has been presented. The trial is likely to take time. No useful purpose would be served by keeping the petitioner in custody anymore. Co-accused Ajay Kumar @ Lucky and Jaskaran Singh have already been granted concession of regular bail by this Court. Even co-accused Sandeep Kumar @ Seepa has been granted concession of anticipatory bail by this Court. Hence, on the ground of party, the petitioner too deserves to be granted concession of regular bail. Therefore, it is urged that the petition deserves to be allowed.

2024:PHHC:161620



4. Status report has been filed by the respondent-State. It is submitted therein and learned State counsel has argued that the petitioner was apprehended at the spot on 24.11.2022 and recovery of 253 grams of heroin was effected from him, which falls under the commercial quantity. He is involved in one more case of similar nature. Hence, the rigours of Section 37 of the NDPS Act would be attracted against him. Trial is going at a proper pace. It is also argued that if the petitioner is released on bail, he may abscond or indulge in the similar offences. It is, thus, argued that the petition is liable to be dismissed.

5. I have heard learned counsel for the parties at considerable length and have also perused the material placed on record.

6. As per the prosecution, the petitioner was apprehended by the police party on 24.11.2022 and recovery of 253 grams of heroin was effected from him, which falls under the commercial quantity. Admittedly, the petitioner is involved in one more case under the NDPS Act. Hence, the rigors of Section 37 of the NDPS Act would certainly be attracted against the petitioner. As regards the arguments advanced by learned counsel for the petitioner with regard to non-compliance of the statutory provisions of the Act during investigation by the police party, the same have direct bearing on the merits of the case, which cannot be looked into at this stage while deciding a bail petition filed under Section 439 of Cr.P.C. There is nothing on record to show that there would be any undue delay in conclusion of trial. The apprehension expressed by learned State counsel that the petitioner, if extended benefit of bail, may abscond or indulge in similar offences can also not be stated to be unfounded. So far as the claim of the petitioner seeking

2024:PHHC:161620



parity with aforesaid co-accused, who have been granted concession of regular bail/anticipatory bail by this Court is concerned, it can be stated that the case of the petitioner is not on similar footing as he was apprehended at the spot and the aforesaid contraband was recovered from him, whereas the above named co-accused were nominated in this case on the basis of the disclosure either made by the petitioner or by another co-accused. Keeping in view the discussion as made above, the quantity of recovered contraband, the quantum of sentence which the conviction may entail and the attendant facts and circumstances of the case, I am of the considered opinion that the petitioner does not deserve to be granted benefit of regular bail, at this stage. Hence, the petition is dismissed.

7. It is made clear that the observations made hereinabove are only for the purpose of deciding the present petition and the same shall not be construed as an expression of opinion on the merits of the case.

04.12.2024
Waseem Ansari

(MANISHA BATRA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>