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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-64867-2023 (O & M)
Date of decision: 26.02.2024

Hardev Singh @ Deba Petitioner
V/s
State of Punjab ...Respondent

CORAM: HON’BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Rishu Mahajan, Advocate,
for the petitioner.

Mr. Deepinder Singh Brar, Sr. DAG, Punjab.

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.122 dated 27.05.2023 under Section 21 of the NDPs Act and Sections 25/27 of the Arms Act, 1959 at Police Station Jandiala, District Amritsar.

2. The brief facts of the case are that Gurbawandeep Singh @ Bihari, Hardev Singh @ Deba (petitioner) and Sahib Singh @ Saba came to be apprehended with 260 grams of heroin, a country-made pistol alongwith three live cartridges and a knife respectively.
3. The learned counsel for the petitioner contends that there is a violation of the mandatory provisions of the Act regarding the search and seizure. No independent witness of recovery was joined during the course of the recovery proceedings. Since the recovery was marginally above the commercial quantity of 250 grams, the petitioner was a first-time offender,

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in custody since 27.05.2023 and none of the 12 prosecution witnesses had been examined so far, he was entitled to the grant of bail.

5. The learned counsel for the State, on the other hand, has filed a reply dated 26.02.2024 which is taken on record. While referring to the same he 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 27.05.2023 and none of the 12 prosecution witnesses had been examined so far.

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

7. 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

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quantity for the respective contraband in each case, the Court granted bail to the accused therein.

8. 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. The petitioner is a first time offender with no other case under the NDPS Act 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 27.05.2023 and none of the 12 prosecution witnesses have been examined so far.

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

10. 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.

11. In addition, the petitioner (or anyone on his behalf) shall prepare an FDR in the sum of Rs.1,00,000/- 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

February 26, 2024

sukhpreet

Whether speaking/reasoned

: Yes/No

Whether reportable

: Yes/No