

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

(216)

CRM-M-1700-2016

Decided on: February 02, 2016.

Avtar Singh @ Happy

.... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

Present: Mr. D.S. Pheruman, Advocate, for the petitioner.

Mr. K.S. Nalwa, Addl. A.G., Punjab.

M.M.S. BEDI, J (ORAL)

Petitioner is an employee of B.S.F. He seeks concession of regular bail in a case which was registered on the basis of secret information to the effect that Sukhcharan Singh and Sohan Singh were indulging in the smuggling activities on Indo-Pakistan Border with the help of other co-accused. 9 kgs of heroin along with Rs.7 lacs were recovered from Sukhcharan Singh and Sohan Singh.

So far as petitioner is concerned, he was involved in the case on the basis of disclosure statement of Sukhcharan Singh during police interrogation to the effect that the petitioner as an employee of B.S.F used to facilitate smuggling from Border along with one Ranjit Singh. Ranjit Singh has been granted concession of bail.

Application for bail has been vehemently opposed inter alia on the ground that the petitioner has committed serious crime by facilitating the inter Border smuggling. Reliance has been placed on the confessional

statement made by him and disclosure statement of co-accused Sukhcharan Singh that the petitioner used to help the smuggling of narcotic substances across the Border.

With the assistance of Mr. K.S. Nalwa, Addl. A.G., Punjab and investigating officer ASI Rajesh Kumar, I have carefully gone through the police file.

Perusal of the police file indicates that the petitioner is accused of having committed offence of abetment under Section 29 of the NDPS Act. He is also been charged under Section 29 of the NDPS Act.

It will certainly be a debatable issue during course of trial whether the disclosure statement of co-accused of the petitioner, would be admissible qua the petitioner. His confessional statement made during his custody appears to have been retracted by him. The authenticity of the confessional statement would also be a debatable issue. No recovery having been effected from the petitioner himself, he, prima facie, cannot be said to have been in possession of the commercial quantity of heroin which was allegedly recovered from Sukhcharan Singh and Sohan Singh. For the misconduct of the petitioner as an employee of B.S.F, departmental proceedings appears to have also been launched.

I have also considered the contentions of learned State counsel that the petitioner is involved in another cases of similar nature i.e. FIR No.18 of 29.12.2014 on similar allegations. Since that FIR was registered during pendency of the present case after the petitioner had been arrested in this case, the pendency of said FIR cannot prejudice the right of the petitioner in the present case.

Taking into consideration the fact that similarly circumstanced co-accused of the petitioner, alleged to have committed offence of abetment, has been granted concession of bail. Trial is likely to take a long time. Chances of petitioner absconding being remote, he being employee of B.S.F and being in custody for the last more than one year i.e. with effect from December, 2014, he can be granted concession of bail.

In view of said circumstances, the petition is allowed. Petitioner is ordered to be released on bail on his furnishing bail bonds/surety bonds to the satisfaction of the trial Court subject to the following conditions:

- (1) Petitioner will not commit similar offence of which he is accused of during pendency of the trial;
- (2) Petitioner will not leave India without the permission of the Court; and
- (3) Petitioner will not tamper with the evidence or hamper the investigation in any manner.

(M.M.S. BEDI)
JUDGE

February 02, 2016
harsha