

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

***CRM No.M-2349 of 2016 (O&M)***

***Date of Decision: 26.02.2016***

Buta Singh @ Buti

... Petitioner

Versus

State of Punjab

... Respondent

**CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.**

Present:- Ms. Riffi Birla, Advocate for the petitioner.

Mr. Jasjeet S. Dhaliwal, DAG, Punjab.

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**TEJINDER SINGH DHINDSA.J.**

Petitioner seeks benefit of regular bail pending trial in case FIR No.49 dated 26.08.2015, under Sections 21/61/85 of the NDPS Act, registered at Police Station Amir Khas, District Ferozepur.

Perusal of the impugned order dated 30.10.2015 passed by learned Judge, Special Court, Ferozepur would reveal that the concession of bail has been declined to the petitioner on the ground that 310 grams of heroin was recovered from the conscious possession of present petitioner, Buta Singh @ Buti as also co-accused, Gurmail Singh and in the light of the same, falling within the scope of commercial quantity, the rigors of Section 37 of the NDPS Act would apply.

Having heard counsel for the parties, this Court is of the considered view that the petitioner is held entitled to the benefit of bail.

Perusal of the FIR would in itself reflect that the case of the prosecution is not that of a joint recovery. The alleged recovery effected from the co-accused, Gurmail Singh from the right pocket of his pyjama was of 255 grams of heroin. The alleged recovery from the conscious possession of the present petitioner is stated to be of 55 grams. As per prosecution version, separate sample parcels were prepared and even Form M-29 was prepared separately.

The Hon'ble Apex Court in *Amarsingh Ramjibhai Barot Vs. State of Gujarat, 2005(7) SCC, 550* has observed that when two accused are found together carrying contraband, the quantity of contraband carried by both the accused is not be added to bring it within the meaning of commercial quantity.

Concededly, the alleged recovery from the present petitioner is of 55 grams of heroin which would be construed as non-commercial. It has also been conceded that the petitioner is not involved in any other case under the NDPS Act.

For the reasons recorded above, the present petition is allowed. Petitioner be enlarged on bail subject to the satisfaction of the Chief Judicial Magistrate/Duty Magistrate, Ferozepur.

Disposed of.

**26.02.2016**

*harjeet*

**(TEJINDER SINGH DHINDSA)  
JUDGE**