

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

1. CRM-M No.14651 of 2016 (O&M)
Date of Decision: 23.05.2017

Harpartap SinghPetitioner
Vs
State of PunjabRespondent

2. CRM-M No.39093 of 2016

Buta SinghPetitioner
Vs
State of PunjabRespondent

3. CRM-M No.32192 of 2016

Harbeer Singh @ BholaPetitioner
Vs
State of PunjabRespondent

4. CRM-M No.35686 of 2016

Gurbachan Singh @ BittuPetitioner
Vs
State of PunjabRespondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Ms. Gursharan K. Mann, Advocate
for the petitioner in CRM-M No.14651 of 2016.

Mr. Ramesh Chand Sharma, Advocate
for the petitioner in CRM-M No.39093 of 2016.

Ms. Anu Chaudhary, Advocate
for the petitioner in CRM-M No.32192 of 2016.

Mr. Ashish Aggarwal, Advocate
for the petitioner in CRM-M No.35686 of 2016.

Mr. P.S. Ghuman, Addl. A.G., Punjab.

RAJ MOHAN SINGH, J.

[1]. Vide this common order CRM-M Nos.14651, 39093, 32192 and 35686 of 2016 are being decided as all the petitions involve similar controversy. For brevity, facts are being culled out from CRM-M No.14651 of 2016 (O&M).

[2]. Prayer made in all the aforementioned petitions is for grant of regular bail in case bearing FIR No.98 dated 04.07.2015 registered under Sections 21/22/24/25/27/28/29/30/61/85 of the NDPS Act at Police Station Sadar Jalalabad, District Fazilka.

[3]. Brief facts are that the FIR was registered on the basis of secret information that Balraj Singh @ Raju, Harbeer Singh @ Bhola, Kaka, Kulwinder Singh, Nachhattar Singh @ Satta, Bitta and Buta and other unknown persons along with BSF Constable Harpartap Singh were involved in smuggling of heroin from Indo-Pak Border. As per the information received the aforesaid persons were roaming in the cars at the Border near the villages Prabhat Singh Wala and Santokh Singh Wala for smuggling of heroin and if, naka is laid at Prabhat Singh Wala Chowk, then they can be apprehended. On confirmation of the aforesaid information, senior officers were informed and FIR was registered.

[4]. During investigation of the case, Harpartap Singh, Buta Singh, Nachhattar Singh @ Satta, Harbeer Singh @ Bhola and Gurbachan Singh @ Bittu were arrested on 05.07.2015 from different places. A sum of Rs.68 lacs in cash, two cars, one Pakistani SIM card, 5 Kgs. of heroin, and a SIM card of Indian phones were recovered. Accused Ranwinder Singh @ Bau @ Kaka was arrested on 10.07.2015 and 300 grams of heroin was recovered from him. It was alleged that the gang was involved in smuggling of 123 kgs. of heroin from Pakistan to India.

[5]. The prosecution further alleged that on 15.07.2015 Harpartap Singh, Gurbachan Singh @ Bittu, Buta Singh, Nachhattar Singh @ Satta, Harbeer Singh @ Bhola and Ranwinder Singh @ Bau @ Kaka were interrogated in the presence of DSP Jalalabad and DSP (Investigation) Fazilka. The accused admitted their guilt and confessional statements of the accused Harpartap Singh, Buta Singh, Gurbachan Singh @ Bittu were prepared and their statements were recorded under Section 27 of the Evidence Act (for short 'the Act'). On the basis of confessional statements, the police along with accused Harpartap Singh, Buta Singh, Gurbachan Singh @ Bittu and the witnesses went to Lachhman Canal, Parbhat Singh Wala and got recovered 1 kgs. of heroin. ASI Kirpal Singh went along with Nachhattar Singh @ Satta, Harbeer Singh @ Bhola and

Ranwinder Singh and DSP (Investigation) Fazilka towards south western portion of Lacchman Canal Parbhat Singh Wala and got recovered 700 grams of heroin.

[6]. The allegations against Harpartap Singh are that during the course of investigation, the Police was deputed at the Border and the involvement of the petitioner was found in the case. Petitioner was asked about the same by the BSF officials and petitioner admitted his involvement in the smuggling of heroin in the night of 03.07.2015 and also got recovered one hidden Nokia mobile phone with two SIM cards. Accused Harpartap Singh was handed over to the police on recovery of said items. The police asserted that while the recovered items were taken into possession, the petitioner made escape from the police. The seizure memo was prepared on 04.07.2015. On 05.07.2015, Harpartap Singh along with Gurbachan Singh @ Bittu, Buta Singh, Harbeer Singh @ Bhola, Nachhattar Singh @ Satta was apprehended by different police parties. Harpartap Singh was apprehended by the police from bus stand Jalalabad with 2 kgs. of heroin and an amount of Rs.68 lacs. Gurbachan Singh @ Bittu and Harbeer Singh @ Bhola were arrested by the police party from Pul Nahar Jodhewala and 1 kgs. of heroin was recovered from Gurbachan Singh @ Bittu and 500 grams of heroin was recovered along with i-20 car from Harbeer Singh @

Bhola. Buta Singh and Nachhattar Singh @ Satta were arrested by the police party from Pul Nahar Kahne Wala and 1 kgs. of heroin along with Swift car were recovered from Buta Singh and 500 grams of heroin was recovered from Nachhattar Singh @ Satta.

[7]. During police remand, Gurbachan Singh @ Bittu got recovered an amount of Rs.11 lacs (drug money) from his house on 09.07.2015. On 10.07.2015, Ranwinder Singh @ Bau @ Kaka was apprehended and 300 grams of heroin was recovered from him. Thereafter on 15.07.2015, 1 kgs. of heroin was recovered on the joint statements of Gurbachan Singh @ Bittu and Buta Singh. similarly, on the basis of joint statements of Nachhattar Singh @ Satta and Harbeer Singh @ Bhola, Ranwinder Singh @ Bau @ Kaka 600 grams of heroin was recovered. The statements were recorded under Section 27 of the Act.

[8]. Accused Kulwinder Singh was brought on production warrant on 24.09.2015 and he got recovered an amount of Rs.15 lacs (drug money) in terms of his disclosure statement under Section 27 of the Act on 25.09.2015. In this way, total 6 kg. and 900 grams of heroin with one Pakistani SIM card, two mobile phones, one i-20 car, one swift car and Rs.94 lacs in cash were recovered from the accused persons. Against co-

accused Balraj Singh @ Raju proceedings in terms of Section 82/83 were initiated, however he was arrested in the present case by producing him on production warrant on 21.10.2016 from District Jail, Ropar. Accused Kulwinder Singh was arrested in some other case at Police Station Makhu and recovery of 2 kgs. of heroin was effected. The said contraband was allegedly taken from Harpartap Singh, who was arrested in the said case i.e. FIR No.114 dated 16.07.2015 under Sections 21/61/85 of the NDPS Act, Police Station Makhu on production warrant on 23.07.2015.

[9]. Learned counsel for the petitioner-Harpartap Singh submitted that the petitioner was handed over to the police by the BSF officials on 04.07.2015 at 2.45 p.m. Taking advantage of the situation, petitioner Harpartap Singh made escape from the spot between 3.00 p.m. to 3.15 p.m. and he had already made confession before the BSF officials in respect of his involvement and recovery of articles already stood recorded in the seizure memo dated 04.07.2015.

[10]. Learned counsel further submitted that as per seizure memo dated 04.07.2015, the following discrepancy was given:-

“On 4th July 2015 At about 1445 hrs., Police party came to BOP (illegible) and informed that Const. Harpartap Singh has accepted his role in attempt of smuggling of

Heroin on night of 3rd July 2015 and told that he had hidden one Nokia mobile phone with SIM card under BFL pole No.281 and another SIM card (Pak) under BFL pole No.279. Both the items were recovered during the joint search operation Police and BSF at about 1500 hrs.”

[11]. By referring to the aforesaid seizure memo, learned counsel contended that the petitioner-Harpartap Singh was already in police custody, when he allegedly admitted his role in smuggling of heroin in the night of 03.07.2015. His arrest from the BSF officials on 04.07.2015 and is alleged escape on 04.07.2015 between 3.00 p.m. and 3.15 p.m. and later his arrest from Bus Stand on 05.07.2015 with 2 kgs. of heroin and an amount of Rs.68 lacs in cash are the result of manipulation inasmuch as that the family of the petitioner had sold the agricultural land on 11.06.2015 and 30.06.2015 and was also involved in agreement to sell dated 26.06.2015. Therefore, the amount was lying in the house of the petitioner and police allegedly took away the aforesaid amount and projected the same as drug money with all evil design.

[12]. I have heard learned counsel for the parties.

[13]. At this stage, this Court is not in a position to form any opinion on merits of the case, lest it may prejudice the case of either side at the time of trial. The aforesaid facts have been noted only for the sake of appreciating the controversy on *prima*

facie view of the matter.

[14]. The evidentiary value of seizure memo having the recital of recovery of mobile phone with two SIM cards from the petitioner in a joint search operation by Police and BSF at about 1500 hours would be considered by the trial Court at the appropriate stage. similarly the defence projected by learned counsel in respect of availability of cash amount with reference to sale deeds and agreement to sell would also be considered by the trial Court at the relevant time.

[15]. The present case is of huge recovery in which number of accused have been involved. On 09.07.2015, Gurbachan Singh @ Bittu made a confession in respect of Rs.11 lacs as drug money which was recovered by the police. Ranwinder Singh @ Bau @ Kaka was arrested along with 300 grams of heroin. Thereafter on 15.07.2015, accused Harbeer Singh @ Bhola, Gurbachan Singh @ Bittu and Buta Singh were arrested and 1 kgs. of heroin was recovered. Accused Harpartap Singh was also arrested in FIR No.114 dated 16.07.2015 under Section 21 of the NDPS Act, Police Station Makhu, when accused Kulwinder Singh made a statement that he took 2 kgs. of heroin from Harwinder Singh and the said Harwinder Singh was arrested in the said case on production warrant on 23.07.2015.

[16]. Accused Buta Singh was arrested on 05.07.2015. 1 kgs. of heroin was allegedly recovered from him. Complicity of accused Gurbachan Singh @ Bittu has also been defined to the effect that on interrogation, he made confession in the context of Rs.11 lacs as drug money and got the same recovered. similarly, the role of other accused has also been *prima facie* found by the police during course of investigation. Accused Harbeer Singh @ Bhola was also found involved in the case, when he along with Nachhattar Singh @ Satta and Ranwinder Singh was arrested and 600 grams of heroin was recovered by ASI Kirpal Singh. i-20 Car bearing registration No.PB-06-K-9000 has been proved to be purchased by accused Harbeer Singh @ Bhola and second Swift car bearing regn. no.PB05-Y-7929 has been proved to be purchased by Balraj Singh @ Raju. The police has collected incriminating material to the effect that when Harpartap Singh (BSF Constable) was on holidays, he came into contact with Nachhattar Singh @ Satta, who is resident of adjoining village and the heroin sent by the Pakistani smuggler Bhola was crossed through the border during night time. A commission was fixed for getting the narcotic transferred. The Police has asserted that Harpartap Singh has received huge quantity of heroin along with pistols sent by the Pakistani smugglers and has handed over the same to the

present gang members. Pakistani smuggler Bhola had direct contact with Balraj Singh @ Raju, who has further confirmed the involvement of gang in the business of drug supply.

[17]. In view of aforesaid complicity of the accused petitioners namely Harpartap Singh, Buta Singh, Gurbachan Singh @ Bittu and Harbeer Singh @ Bhola, I do not consider that they have any case for the grant of concession of regular bail.

[18]. Consequently, all the petitions stand dismissed.

[19]. Nothing expressed hereinabove would be construed to be an expression of any opinion on merits of the case.

[20]. A photocopy of this order be placed on the file of connected cases.

May 23, 2017

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No