

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

**CRM-M-43055-2016
Date of decision :27.10.2017**

Kashmir Singh @ Mithu

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR.JUSTICE H.S. MADAAN

Present : Mr. Vipul K. Jindal, Advocate
for the petitioner.

Ms. Samina Dhir, DAG, Punjab.

H.S. MADAAN, J.

Kashmir Singh @ Mithu, an accused in FIR No.3 dated 03.01.2014 for offence under Section 21 of NDPS facing trial by Judge Special Court Tarn Taran is seeking regular bail in this case.

Briefly stated facts of the case are that on 03.1.2014, at about 12:15 p.m., on receipt of a secret information Inspector Inderjit Singh along with other police officials after sending ruqa and informing DSP (D) Jaswant Singh had laid a Nakka and intercepted accused Kashmir Singh @ Mithu along with Parmod Kumar @ Laddi, who were apprehended and 4 Kgs. heroin was recovered from them; that they were carrying the said

contraband in the bags hanging on their shoulders.

After completion of investigation the accused had been challaned. Presently, the petitioner is facing trial by Judge Special Court Tarn Taran.

It is contended that the trial has not been completed so far, despite passage of 4 years. It is further contended that the entire proceeding stand vitiated as Investigating Officer was holding a substantive rank of Head Constable at that time and was not permanent ASI. Therefore, he was incompetent to apprehend the accused in violating provisions of NDPS Act, 1985 and for that reason accused have been acquitted in several cases and in this case the accused deserves to be granted bail and Section 37 of NDPS Act does not come in way of granting bail to the petitioner. In support of his contention learned counsel for the petitioner has referred to various authorities, which are as under:-

- i. Ranjitsing Brahmajeetsing Sharma vs. State of Maharashtra and another 2005 AIR (SC) 2277.
- ii. Radheyshyam @ Raju Rathore vs. Union of India in Criminal Appeal No.799 of 2017 decided on 26.04.2017 of Hon'ble Supreme Court of India.
- iii. Baljinder Singh @ Sonu vs. State of Punjab, CRM-M-38663-2015 decided on 15.02.2016 by this Division Bench of this Court.
- iv. Maninder Singh @ Bittu Aulakh vs. State of Punjab CRM-M-1579-2016 DOD 24.02.2016 by this Division Bench of this Court.

- v. Varinder Sandhu vs. State of Punjab, CRM-M-42497-2016 DOD 08.02.2017 by a Division Bench of this Court.
- vi. Suresh Kumar vs. State of Punjab, CRM-M-7106-2016 DOD 16.03.2016 by the Division Bench of this Court.
- vii. Chamkaur Singh vs. State of Punjab CRM-M-8426-2017 (O&M) DOD 16.08.2017 by a Coordinate Bench of this Court.
- viii. Raja Singh vs. State of Haryana, CRM-M-1223-2015 DOD 23.02.2015 by a Coordinate Bench of this Court.

However, learned State counsel has controverted such contention stating that Inspector Inderjit Singh was drawing salary of Sub-Inspector at relevant time and therefore, his rank is to be taken as such and the recovery is not adversely affected for the reason that he was not having the regular rank of Inspector. Furthermore, no prejudice is shown to have been caused to the accused, Section 37 of the Act clear comes in the way of granting regular bail to the petitioner.

After hearing the rival contentions I find that while considering the aspect as to whether the the petitioner is to be granted regular bail or not, this Court is not to hold a mini trial so as to go into the merits of the case which is prerogative of the trial Court. The trial Court on the conclusion of the trial is to see whether charge against the accused stands proved or not. The legal and factual infirmities are to be considered and weighed at that time and not at this stage. As per the custody certificate placed on file the petitioner is involved in several other criminal cases which are as under :-

- i. FIR No.153/9 under Sections 365/341 IPC, Police

Station C. Division, Amritsar.

ii. FIR No. 35/16 under Section 473/411 IPC, Police Station Cantt. Amritsar.

iii. FIR No.131/12 under Sections 21 NDPS Act, Police Station Chatiwind, Amritsar.

That means he has got a criminal past, the recovery involved in this case is very huge. If granted bail there are reasonable chances of his taking to path of crime again causing trouble in the society by his acts. Furthermore the apprehension expressed by State counsel that there are reasonable chances of his absconding and trying to tamper with the prosecution evidence cannot be taken lightly. Last but not the least bar of Section 37 of the NDPS Act, 1985 is there which provides as under:-

“xxxxxxx

B. No person accused of an offence punishable for 2[offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

I am satisfied that there are reasonable grounds for believing that the petitioner is not guilty of offence under Section 21 of NDPS Act or

that he is not likely to commit any offence while on bail. The authorities referred to by learned counsel for the petitioner are not applicable due to different facts and circumstances and the context in which such observations had been made. Therefore, there is no merit in the petition, the same stands dismissed. However, the trial Court is directed to conclude the trial expeditiously by granting short adjournments. A copy of this order be sent to the trial Court for information and necessary compliance.

27.10.2017*Gaurav Sorot*

**(H.S. MADAAN)
JUDGE**

1. Whether reportable? **No**
2. Whether speaking / reasoned? **Yes**