

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M No. 19835 of 2018 (O&M)

Date of decision : 1.6.2018

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Gurpreet Singh @ Gopi

.....Petitioner

vs.

State of Punjab

.....Respondent

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Rajbir Singh, Advocate
for the petitioner.

Mr. Saurav Khurana, Deputy Advocate General,
Punjab.

Mr. Kulvinder Singh, Advocate for
Mr. Sanjeev Goyal, Advocate for the complainant

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H. S. Madaan, J.

This petition for regular bail has been filed by petitioner - Gurpreet Singh @ Gopi, an accused in FIR No. 47 dated 6.4.2016, for an offence under section 21 of the NDPS Act, registered at Police Station City Dhuri, District Sangrur.

Briefly stated, facts of the case, as per the prosecution story are that on 6.4.2016, at about 7.00 P.M. a police party from Police Station Dhuri, while being present at T-point near Mansa Devi

Mandir, observed a motorcycle, black in colour, make CD Deluxe bearing No. PB 29N 8701, coming from Barnala side. It was being driven by Gurpreet Singh @ Gopi with Karamjit Singh @ Puri @ Kamma, pillion riding it. Their personal search was conducted as per law, which resulted in recovery of 150 grams of heroin from Gurpreet Singh and 110 grams of heroin from Karamjit Singh. Both of them were arrested in this case.

After completion of investigation, they have been challaned and sent up to face trial. Learned Judge Special Court, Sangrur, has framed charge against them vide order dated 17.1.2018 in the following manner:-

“That on 6.4.2016 at about 7:00 P.M. In the area of T point near Mansa Devi Mandir, Dhuri, you accused Gurpreet Singh were found in conscious possession of 150 grams of heroin and your co-accused Karamjit Singh was found in conscious possession of 110 grams of heroin on motorcycle CD Delux PB 29N-8701 black in colour and the total heroin recovered from you comes out to be 260 grams which was concealed in a similar manner by both of you having salt 11.67% and 11.74% of Diacetylmorphine (heroin) without any permit or licence and thereby you committed an offence punishable under Section 21/61/85 of NDPS Act within the cognizance of this Court”

Petitioner Gurpreet Singh had moved an application for

grant of regular bail, which was dismissed by Judge, Special Court, Sangrur, vide order dated 12.2.2018, observing as follows:-

“6. Perusal of record reveals that though from applicant-accused only 150 grams of Heroin has been recovered in the present case, but after the presentation of challan, when the charge was framed them charge of total quantity of 260 gram Heroin was framed against applicant-accused Gurpreet Singh as the case of prosecution is that from the applicant-accused as well as co-accused Karamjit Singn (who has been declared proclaimed offender), total quantity of 260 grams Heroin was recovered which was concealed in similar manner by both the accused. It is only the question of trial as to whether quantity of 260 grams has to be taken or only 150 grams of Heroin which has been recovered from the personal and conscious possession of applicant-accused Gurpreet Singh and the same depends upon the evidence of prosecution. So, at this stage the total quantity is to be taken into account for granting bail which in the present case falls in commercial quantity. Moreover, co-accused Karamjit Singh has already been declared proclaimed offender. Thus, in view of Section 37 of Narcotic Drugs and Psychotropic Substances Act, 1985, the circumstances of the case do not warrant for the

grant of concession of bail to applicant-accused in this case and accordingly, his bail application is declined.”

Feeling aggrieved, the petitioner has approached this Court craving for grant of regular bail, which petition is being resisted by the State counsel.

I have heard, learned counsel for the petitioner, learned State counsel, besides going through the record.

As it comes out from the record and is obvious from the charge framed against the petitioner and his co-accused, the recovery effected from both of them is to be seen collectively as 260 gams, which comes under the commercial quantity. During the trial, the petitioners may be able to establish that they were not aware of the contraband being carried by each other, as such they can be held to be in conscious possession of contraband recovered from them individually and not by adding the contraband recovered from their co-accused. However, as the things stand, the recovery has to be taken collectively and not individually, which attracts the bar of Section 37 of the NDPS Act. As such the petitioner is not entitled to the concession of bail.

Further more, the co-accused of the petitioner is stated to have been declared as a proclaimed offender. Even if it is taken that the petitioner was carrying only 150 grams of heroin, even then no case for grant of bail to him is made out, since he by indulging in drug trafficking has committed a heinous crime, putting lives of the youth of the area in danger and seriously injuring the social fabric.

The trial against him is going on. His guilt shall be determined during the course of trial. There is reasonable apprehension of his indulging in drug trafficking again if granted regular bail.

As regards the authority referred to by the learned counsel for the petitioner in *Rakesh Kumar vs. State of Punjab 2014 (1) Cri.CC 159*, by a Coordinate Bench of this Court, the observations had been made on the facts and circumstances of that case, which are quite different and distinct from those of the case in hand. Therefore, that authority does not help the petitioner in any way.

In view of the above discussion no case for grant of regular bail to the petitioner is made out.

The petition being without any merit, stands dismissed.

1.6.2018
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(H.S. Madaan)
Judge

Whether speaking / reasoned Yes/ No

Whether reportable Yes/ No