

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

CRM-M-31646-2018 (O&M)

Date of Decision:- 29.10.2018

Pardeep Kumar @ Pindu

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

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

Ms. Ruchika Sabherwal, Assistant Advocate General, Punjab.

GURVINDER SINGH GILL, J.

Petitioner Pardeep Kumar @ Pindu has filed this petition seeking grant of regular bail in respect of a case registered against him vide FIR No.27 dated 11.4.2017 under Sections 21, 25 and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985, Police Station Jhandher, Amritsar.

The allegations, in nutshell, are that on 11.4.2017, when a police party headed by SHO, Police Station Jhandher was patrolling in the area of Village Bath, then a secret information was received that Balkar Singh, Gurpreet Singh, Pardeep Kumar alias Pindu were indulging in business of intoxicating substances and that a few days ago, a heavy quantity of heroin was recovered from their companion Onkar Singh etc. and that their head is Balkar Singh who has links with smugglers in Pakistan. The

information was further to the effect that Balkar Singh had amputated legs and he along with his companion Pardeep Kumar alias Pindu was coming on his LML Vespa scooter No. PB-46-K-3379 having four wheels and they were proceeding to village Kamalpura to deliver consignment of Heroin. Pursuant to receipt of said information, barricades were laid on bridge over minor canal, Village Bath and Balkar Singh who was driving the scooter and the petitioner who was pillion rider were apprehended and upon their search 800 grams of Heroin was recovered from Balkar Singh which was tied in a parna around his waist. Upon search of petitioner 200 grams of Heroin was recovered from the front pocket of the Kurta worn by him.

The learned counsel submitted that in case of recovery of contraband from two person apprehended together who were carrying contraband individually, the quantity of contraband carried by both the accused could not be added to bring it within meaning of 'commercial quantity', in the absence of any evidence that there was conspiracy between the two and that Section 29 of NDPS Act will not be attracted. The learned counsel, in order to support his aforesaid submission has placed reliance upon a judgement of Hon'ble Supreme Court reported as Amarsingh Ramjibhai Barot vs. State of Gujrat (2005)7 SCC 550.

On the other hand the learned State counsel has submitted that since both the accused were apprehended together and both were found in possession of Heroin, the total of which works out to 1 KG, which falls within the category of "commercial quantity" the rigours of section 37 of

NDPS Act would be attracted and consequently the petitioner is not entitled for grant of bail.

Having considered rival submissions addressed before this Court and bearing in mind the fact that it is a case where 2 persons were apprehended together and while 800 gms of heroin was recovered from non-applicant/ co-accused, the search of the petitioner had yielded recovery of 200 gms of heroin. Recovery of 200 gms of heroin would individually be a quantity lesser than 'commercial quantity'. It would certainly be debatable and would be a matter of evidence as to whether there was a conspiracy between both the persons apprehended together so as to attribute conscious possession of the total recovered quantity to both the accused or as to whether each of the accused is to be fastened with individual liability only in respect of the contraband recovered from each of them individually. As per custody certificate filed by State, the petitioner has been behind bars since the last more than one year and 5 months.

Having regard to the aforesaid facts and circumstances, in my opinion it is a fit case for grant of concession of bail. The petition, as such, is accepted and the petitioner is ordered to be released on bail subject to his furnishing bail bonds and surety bonds to the satisfaction of trial court.

The petition stands accepted accordingly.

October 29, 2018

kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No