

CRM-M-26745-2020 (O&M)

Through Video Conference

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

**CRM-M-26745-2020 (O&M).
Decided on: November 17, 2020.**

Najakat @ Shankar

.. Petitioner

VERSUS

State of Haryana

.. Respondent

*** * ***

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

*** * ***

**PRESENT Ms.R.K.Grewal, Advocate,
for the petitioner.**

Mr.Naveen Sheoran, DAG, Punjab.

JASGURPREET SINGH PURI, J. (ORAL)

The present petition has been filed under Section 439 of the Code of Criminal Procedure, seeking regular bail in FIR No.121 dated 27.2.2020, under Sections 18 and 29 (added later on) of Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Pehowa , District Kurukshetra.

As per the allegations contained in the FIR when the

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police party was on patrolling checking and search of most wanted criminals then there was a secret information that Shamsher Singh @ Shera resident of village Rasula, District Rampur, Uttar Pradesh, and his nephew Malkiat Singh son of Sukhdev Singh, resident of village Alampur, District Distict Patiala, used to smuggle opium jointly and that both of them Shamsher Singh as well as his nephew Malkiat Singh are also coming from Samana side with huge quantity of opium on their Maruti Zen Car and to go to supply the opium towards Kurukshetra city and if they are intercepted, they can be apprehended. Thereafter, procedure under the NDPS Act was followed and both the aforesaid accused were apprehended. Thereafter, recovery of 2 Kg. 800 gms. of opium from the aforesaid two accused was made.

The arrest of the aforesaid two accused took place on 27.2.2020 and thereafter, on 1.3.2020, one of the co-accused namely Shamsher Singh @ Shera made a disclosure statement on the basis of which the petitioner was nominated in the Present FIR and was thereafter, was arrested on 5.7.2020.

Learned counsel for the petitioner has submitted that the petitioner has been falsely implicated in the present case only on the basis of disclosure statement made by co-accused which is otherwise not admissible in evidence. He has further submitted that the petitioner has nothing to do with the present seizure of contraband from the aforesaid accused namely Shamsher Singh @ Shera and Malkiat Singh and it was only because of personal enmity between Shamsher Singh and the present petitioner that the

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petitioner has been allegedly named by said Shamsher Singh. He has submitted that sister of the petitioner had a dispute with Shamsher Singh and both of them belong to Uttar Pradesh and it was due to this reason that petitioner was named by Shamsher Singh in this regard. He has further submitted that the petitioner is not involved in any other case and that it was for the first time that due to personal enmity between sister of the petitioner and the aforesaid Shamsher Singh that he was falsely named in the present case. He has further submitted that it was a case where there is no material with the police authorities to connect with the present recovery from the co-accused. Petitioner being in custody since July 2020, and investigation of the case is already complete as challan stands presented, the petitioner may be considered for the grant of regular bail.

Per contra, learned State counsel has referred to the affidavit which has been filed by Mr.Gurmail Singh, HPS, DSP, Pehowa, Kurukshetra, wherein it is mentioned that it was on the basis of disclosure statement of co-accused namely Shamsher Singh and Malkiat Singh that the present petitioner was arrested by the police on 5.7.2020 and that the above said contraband was recovered from co-accused Shamsher Singh and Malkiat Singh which was allegedly supplied to them by the petitioner as per the disclosure statement and the recovery being of commercial quantity, learned State counsel has prayed for dismissal of the present petition.

In the affidavit it has been further submitted that challan in the case has already been presented on 30.7.2020 and out of total 20 prosecution witnesses, no witness has been examined. It has been further

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categorically stated in the affidavit that there is no other case pending/registered against the petitioner beside the present case. Further, it has been stated in the affidavit that the petitioner has admitted before them that he had supplied opium to the co-accused and have taken amount of Rs.2 lacs.

Learned State counsel, on instructions from ASI Subhash Kumar, has submitted that there was recovery of Rs.1,000/- from the petitioner. However, said argument has been repelled by the learned counsel for the petitioner stating that there is no material available on the record to show that the petitioner was involved in the present case except the disclosure statement. State counsel submitted that since the recovery of 2 kgs. 800 gms. of opium, is although marginally higher than the prescribed limit of 2 kgs 500 gms. under the NDPS Act, the same is still commercial in nature as per the NDPS Act and therefore, has prayed for dismissal of the petition.

I have heard the learned counsel for the parties.

Some of the facts are not disputed in the present case. The investigation is already complete and challan has already been presented and no prosecution witness has been examined as on today. Custody period of the petitioner is also not disputed. It is also not disputed that the petitioner has been nominated on the basis of disclosure statement made by co-accused who were apprehended from the spot.

Learned State counsel has stated that from the petitioner recovery of Rs.1000/- was made.

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The alleged recovery in the present case is of 2 kgs. 800 gms. of opium which is marginally higher than the commercial quantity which is 2 kgs 500 gms. under the NDPS Act. Since the alleged recovery is commercial in nature, the provisions of Section 37 of the NDPS Act, would certainly be attracted. However, under the provisions of Section 37 of the Act, the bar for grant of bail although mandatory is subject to exceptions which can be made in the facts and circumstances of each case where it can be shown that the public prosecutor has been granted opportunity of hearing and there are reasonable grounds for believing that the petitioner has not committed such an offence and that he is not likely to commit any offence while on bail.

Therefore, while considering the grant of bail in a case of recovery of commercial quantity, the Court has to satisfy itself as to whether on that stage there exists reasonable ground for believing that he is not guilty of such offence. In the present case, the learned State counsel has already been granted opportunity and it is not the case of the State that if the petitioner is released on bail then he is likely to commit any offence while on bail. However, the issue involved in the present case would be as to whether there exists any reasonable ground for believing that he is not guilty of offence, at this stage. The facts and circumstances of the case would show that the petitioner is not involved in any other case as stated by the learned State counsel. According to the learned counsel for the petitioner, it was a dispute between one of the co-accused namely Shamsheer Singh with the sister of the petitioner in Uttar Pradesh and because of this

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reason, the petitioner appears to have been named by the aforesaid co-accused. She has submitted that taking into consideration the background of the petitioner where he is not involved in any other case as stated above, the petitioner cannot be reasonably presumed to be guilty at this stage merely on the basis of the disclosure statement of the aforesaid co-accused as the same is also not admissible in evidence.

Furthermore, the learned State counsel has not been able to show any material as to how the petitioner was connected with the present recovery. Neither any telephone call details nor any other material sufficient to connect the petitioner with the present case has been shown to the Court. Furthermore, the recovery made from the petitioner is of Rs.1000/- whereas as per the affidavit filed by the State it has been stated that the petitioner has himself admitted that he had sold the contraband for Rs.2 lacs. The aforesaid statement made by the petitioner to the police would also be not admissible in evidence because the same has been made to a police officer.

Therefore, considering the totality of the circumstances of the present case, this Court is satisfied that it is a fit case where a departure can be made from the bar created under Section 37 of the NDPS Act and at this stage, it can be held that there are reasonable grounds for the Court to believe that he is not guilty of such offence.

Accordingly, the present petition is allowed. It is ordered that the petitioner shall be released on bail on furnishing bail bond/surety bond to the satisfaction of the concerned trial Court/Duty Magistrate.

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However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant only for the purpose of decision of present petition.

November 17, 2020.	JASGURPREET SINGH PURI)
raj arora	JUDGE
Whether speaking / reasoned	Yes / No
Whether reportable	Yes / No