

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

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CRM-M-1474-2020 (O&M)

Date of decision : 27.01.2021.

Sadhu Singh

.....Petitioner

Vs.

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. Ashok Kumar Khunger, Advocate for the petitioner.

Mr. Ramandeep Sandhu, Sr. DAG, Punjab.

ALKA SARIN, J. (ORAL)

Heard through video conferencing.

This is a petition under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail in FIR No.0014 dated 25.01.2019 under Sections 21, 23, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act' for short) registered at Police Station Sadar Fazilka, District Fazilka.

The brief facts pertaining to the present case are that the FIR was registered on the basis of a letter received from Battalion Border Security Force, BOP GG-II, dated 24.01.2019 wherein it was alleged that on 24.01.2019 at about 13:00 Hrs OP No.02 of BOP GGII 96 Bn BSF consisting of No.11182536 CT/GD Kuldeep Singh and No.123190107 CT/GD Shankar Ram observed some suspicious movement of one kissan, namely, Sadhu Singh, petitioner-herein, who was working on his agricultural land ahead of the Border Security fence in alignment of BP No.246/M. It was observed that the petitioner threw something over the border security fence from Pakistan side to India side. Subsequently, the BSF personnel kept

a continuous surveillance on the activities of the petitioner. After throwing

the object, the petitioner came out from Border Security Fence gate No.246/M and started searching in the wheat field in alignment of BP No.246/M in India side where he had thrown the suspected packet. At about 1:30 PM when the petitioner recovered the thrown packet, the BSF personnel immediately caught him red handed along with 02 packets wrapped up by yellow polythene. The matter was informed to the Offg. Coy Comdr. Insp. Indraj Singh and Sh. Surender Singh Sangwan, Dy. Commandant by the BSF personnel, who reached the spot and checked the packets. The packets contained substance, suspected to be heroin, weighing 1.9 kg.

Learned counsel for the petitioner would contend that the petitioner has falsely been implicated in the case and that he has been in custody for two years. He further states that there is non-compliance of Section 50 of the NDPS Act.

Learned counsel for the State has vehemently contended that the petitioner was apprehend with 1 kg 900 grams of heroin by the BSF and that on the basis of the letter the FIR was lodged. Frisking of the petitioner had further led to recovery of mobile phone and two sim cards as well as Rs.5450/-, one BSF gate-pass and two Aadhaar cards. On interrogation he revealed that he was going to handover the packets to Paramjeet Singh, who was standing at a distance of approximately 200 mtr from the BSF Fence to collect the consignment. The matter was immediately intimated to DSP Fazilka along with the mobile number of Paramjeet Singh for further course of action. The custody of the petitioner was also handed over to the concerned DSP. Learned State counsel further states that since it was not a personal search, the question of compliance of Section 50 of the NDPS Act

would not arise.

I have heard learned counsel for the parties.

In the present case the petitioner was apprehended with 1 kg 900 grams of heroin. As per the learned State counsel, the petitioner, whose land falls beyond the BSF Fence, had a BSF gate-pass which was used by him for going to his land. The said gate-pass was also recovered from the petitioner. The petitioner was spotted throwing a packet over the security fence and thereafter he walked through the BSF gate. The petitioner was apprehended the moment he had found and picked up the thrown packet. On being apprehended, the packet thrown was found to contain 1 kg 900 grams of heroin. The argument of the learned counsel for the petitioner that Section 50 of the NDPS Act has not been complied with would not be applicable in the present case inasmuch as the packet was not recovered from the conscious possession of the petitioner. Keeping in mind the huge quantity recovered, the rigors of Section 37 of the NDPS Act would come into play.

In view of the above, I do not find this to be a fit case for grant of regular bail to the petitioner. However, since the petitioner has been behind bars for a period of about two years, the present petition is disposed off with a request to the Trial Court to expedite the hearing of the trial.

It is made clear that any observation made herein shall not be treated as an expression of opinion on the merits of the case.

Disposed off.

January 27, 2021
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(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Yes/No
Whether reportable: Yes/No