

CRM-M-5417-2021 (O&M)

Through video conference

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

**CRM-M-5417-2021 (O&M).
Decided on: September 30, 2021.**

Amandeep Singh @ Manu

.. Petitioner

VERSUS

State of Punjab

.. Respondent

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CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

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JASGURPREET SINGH PURI, J. (ORAL)

**PRESENT Mr.Sarbjit Singh, Advocate,
for the petitioner.**

Mr.Randhir Singh Thind, 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.57 dated 30.04.2020, under Sections 21, 29, 61 and 85 of NDPS Act, 1985, registered at Police Station STF Border Range, Amritsar, District Amritsar.

FIR in the present case was lodged on the basis of an information given to the police by one informer that two persons namely Suba

Singh and Punjab Singh who are real brothers are active in the smuggling of heroin from a long time and they have connections with the Pakistani heroin smugglers and are selling heroin at large scale in the different cities of Punjab after getting it across the border and even now they have obtained heavy quantity of heroin from Pakistani smuggler Bittu and this heroin has been kept by the above-said Bittu across fence on the Indian land adjoining Pakistan in the area of Shahpur Khurd, Police Post BSF Sector Ajnala and said Suba Singh and Punjab Singh were trying to pick it up for the last two days but could not and kept it concealed due to patrolling of the BSF and in case any search is made by the BSF in the area of Police Post Shahpur Khurd across the fencing in the Indian land adjoining the Pakistan coming under the jurisdiction of the BSF then heroin can be recovered in heavy quantity. Thereafter, the present FIR was lodged on the basis of the aforesaid information.

Learned counsel for the petitioner has submitted that the petitioner was not named in the FIR and it was only on the basis of disclosure statement made by co-accused namely Karam Singh @ Salu that his name has been nominated and that the petitioner is not involved in any other case and therefore, he may be considered for the grant of regular bail. He has submitted that the petitioner is in custody since 03.05.2020 and the investigation of the case is already complete and the challan has already been presented. He has submitted that the petitioner was not even present at the time when the confiscation was done by the Police and the other co-accused namely Karam Singh was not an employee of the petitioner and so far as the petitioner is concerned, he has been falsely implicated.

Mr. Randhir Singh Thind, learned DAG, Punjab has submitted that a detailed affidavit has been filed by the Deputy Superintendent of Police, Special Task Force, Border Range, Amritsar. While referring to the affidavit, learned State counsel has submitted that on the basis of the information received by the Police, the Special Task Force, Border Range, Amritsar, conducted a raid in the house of Suba Singh and Punjab Singh but they were not found present at their home and therefore, the search could not be conducted on the land across the fencing. Thereafter, on 01.05.2020 another information was received by the Investigating Officer that co-accused namely Karam Singh @ Salu and Amandeep Singh @ Manu (petitioner) were going to pick up large quantity of heroin from across the fencing in the Indian land adjoining Pakistan in the area of Shahpur Khurd near the BSF Sector Ajnala which has been kept concealed by Pakistani smuggler Bittu and if they are arrested, a large quantity of concealed heroin can be recovered on the basis of their disclosure statements. Thereafter, the Police party under the supervision of the Deputy Superintendent of Police, Special Task Force, Border Range, Amritsar conducted a raid in the house of co-accused Karam Singh and arrested him after following due procedure under Cr.P.C. and during custodial investigation, he suffered a disclosure statement in which he stated that he was working as a farm labourer with Amandeep Singh @ Manu who is having his agriculture land across the fence at village near the Shahpur forward Post No.32 BN of BSF at Gate No.65 and he was asked by Amandeep Singh @ Manu (petitioner) to deliver the procured heroin after digging it from his fields for which he would be paid an amount of Rs.10 lakhs that they would distribute amongst themselves. He

further disclosed that on 30.04.2020, he and Amandeep Singh @ Manu went to the said land across the fence for the purpose of harvesting wheat crop and picked up 2 packets of heroin after digging the land. Out of 05 packets, 03 packets and an iron casing of the lift of the tractor were kept buried there and they tried to bring these packets by concealing them in their combine but could not succeed due to strictness of the BSF and buried those packets by digging a pit in the field and burying the said packets in it near the boundary. He further disclosed that he can get these 5 packets of heroin and iron casing of tractor recovered. Thereafter, on the same day while in police custody, the co-accused Karam Singh got recovered a total 6.690 kilograms heroin from the agricultural land owned by the petitioner near Shahpur forward post No.32 BN of B.S.F. at gate No.65 across the fencing adjoining the Pakistan-India border by walking ahead of the police party in pursuance to the disclosure statement in the presence of the Deputy Superintendent of Police, Special Task Force, Border Range, Amritsar, and thereafter huge recovery was made in different packets which have been detailed in para 5 of the affidavit. Thereafter, on 03.05.2020, the petitioner was arrested from a vegetable market, at Vallah, Amritsar, on the basis of secret information and during custodial investigation, he also suffered a disclosure statement under Section 27 of the Evidence Act, wherein he disclosed that he owns 12 acres of land across the fencing on the India-Pakistan Border at village Bal Labhe Daria near Shahpur forward post of B.S.F. and about three years ago, he fell into a bad company and became addicted to heroin and also stated about selling the same due to excessive consumption and he further disclosed that he knew Karam Singh co-accused for the last 2-3 years who was also

addicted to narcotics and they both started consuming and selling the drugs together. He further disclosed that about a week ago he received a WhatsApp call from Pakistani smuggler namely Bittu who lured him to deliver packets of heroin to his associates after receiving from him a payment of Rs.10 lakh through Hawala and told him that he would bury some packets of heroin in his land adjoining to border which can be picked up by him from there. The report of the FSL also states that the recovered contraband was heroin.

The learned State counsel has, therefore, submitted that in view of the seriousness and magnitude of the present case wherein heroin has been smuggled across the border, the petitioner does not deserve the concession of regular bail. He submitted that although the petitioner is not involved in any other case but the bail application filed by the petitioner would be barred under the provisions of Section 37 of the NDPS, Act and no ground is available to the petitioner for making any departure from the aforesaid bar and therefore, he has prayed for dismissal of the present application.

I have heard the learned counsel for the parties.

The allegations which have been contained in the FIR and the investigation process which have been mentioned in the affidavit would certainly suggest that the matter is not only serious in nature but also is of high magnitude. Furthermore, the Court also has to consider the bar contained under Section 37 of the NDPS Act. A departure can always be made under Section 37 of the NDPS Act subject to the conditions that the ingredients contained in the aforesaid Section are fulfilled for making a departure. The first and the foremost ingredient is that the Court has to

satisfy itself that there is more than prima facie reason to believe that the petitioner is not guilty. However, in the present case, this Court is not satisfied that the petitioner has anything more than a prima facie case or any reason to believe that he is not guilty. Therefore, the bar contained under Section 37 of the NDPS Act, would be attracted in the present case.

Therefore, considering the totality of the circumstances of the present case, the present petition is hereby dismissed.

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.

September 30, 2021.	(JASGURPREET SINGH PURI)
raj arora	JUDGE
Whether speaking / reasoned	Yes / No
Whether reportable	Yes / No