

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

CRM-M-7195-2021 (O&M)

Date of decision: 15.09.2021

Balwinder Singh

...Petitioner

Versus

Narcotic Control Bureau, Chandigarh

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. R.K. Gupta, Advocate for the petitioner.

Mr. Sanjay Vashisht, Advocate for the respondent.

H.S. MADAAN, J.

Case taken up through video conferencing.

This second petition for regular bail has been filed by petitioner Balwinder Singh, an accused in Crime No.37 dated 13.09.2018, for offences under Sections 8, 18 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act'), registered with Police Station Patran, District Patiala.

In nutshell, the prosecution story is that, on 13.09.2018, at about 0115 hrs, in the area of T-point of Sangur and Samana junction, a team comprising officials of Narcotic Control Bureau, Chandigarh in pursuance of secret information, intercepted vehicle make Mahindra, having registration No.PB22-F-8844, which was being driven by Balwinder Singh (present petitioner) with one Harjinder Singh, sitting with him on the front seat; the vehicle on being searched as per rules was

found to have 03 packets containing opium in the hollow space below right side back seat; all the 03 packets were found wrapped with brown colour tape; the first packet weighed 360 gms, second 1.090 kg and 3rd 2 kgs of opium; the total weight being all the 03 packets being 3.450 kgs; petitioner and his co-accused Harjinder Singh were formally arrested; the investigation in the case started; on completion of investigation, formal complaint has been filed in the Court; the trial is going on; out of 17 PWs cited by the prosecution, 09 PWs are said to have been examined with next date of hearing in the trial Court being 27.09.2021.

The petitioner had moved the Court of Sessions at Patiala seeking regular bail but was unsuccessful. He had filed a petition for regular bail in this case earlier. The said petition bearing No.CRM-M-15139-2019 was withdrawn by counsel for the petitioner on 16.01.2020. This is the second petition for regular bail filed in this Court on behalf of the petitioner, which is being vehemently opposed by counsel appearing on behalf of NCB-respondent.

I have heard learned counsel for the parties besides going through the record.

The recovery of contraband in this case is quite heavy, which amounts to commercial quantity, attracting bar of Section 37 of the Act. This section clearly provides that every offence punishable under the Act shall be cognizable and no person accused of an offence involving commercial quantity etc., shall be released on bail, if the petition is opposed by the Public Prosecutor, unless, the Court is satisfied that there are reasonable grounds for believing that the accused is not guilty of such

offence and he is not likely to commit any offence while on bail. Keeping in view the facts and circumstances of the case, I do not find any reason to record satisfaction required by this provision. Therefore, due to bar of Section 37 of the Act, the petitioner is not entitled to grant of regular bail.

Furthermore, the petitioner is shown to be involved in 03 more criminal cases. He is said to have been convicted in first case bearing FIR No.384 dated 22.11.2006, for an offence U/s 61 of the Excise Act, registered with Police Station Bhaghapurana, District Moga. Although, in a case bearing FIR No.23 dated 16.04.2011, for an offence U/s 15 of the Act, registered with Police Station Bhaghapurana, District Moga, he is shown to have been acquitted, vide judgment dated 20.11.2014 by giving him benefit of doubt but the fact remains that accused was booked in the said criminal case. He was arrested in such case and the matter was investigated. The investigating agency found sufficient evidence to send him to face trial, it was so done accordingly. Though, on completion of the trial, on account of failure of the prosecution to prove charge against the accused beyond a shadow of reasonable doubt, he was acquitted but that does not mean that the said case against the petitioner has disappeared in the air. As regards the third case, bearing FIR No.29 dated 24.03.2005, registered under Sections 489-A, 489-B and 489-C, with Police Station Khuta, District Baaglour (Odessa), it is still stated to be pending. That goes to show the criminal bent of mind of the accused and fortifies the version of the prosecution regarding petitioner being a drug peddler. Such drug peddlers by their nefarious activities pose a great danger to the health and lives of many

persons by making them take to drugs for a small time kick. Of course, the motive of a drug peddler is to mint money. He is concerned with his own profit and does not hesitate to play with lives of several innocent persons in the process.

Keeping in view the nature and extent of recovery, the past criminal record of the petitioner, I find that it would be proper and appropriate if his freedom is curtailed and he is directed to remain behind bars, rather than, allowing him bail and run risk of disturbance of peace and tranquility in the society by petitioner indulging in drug peddling again and making several gullible persons take to drugs.

Learned counsel for the petitioner has raised various legal objections with regard to the investigation of the case. However, such contentions may be having some relevance during trial but not at the stage of deciding the question as to whether an accused is entitled to grant of bail or not. The factors which are required to be considered while determining a question with regard to entitlement of an accused to grant of bail includes the gravity of the offence, the facts and circumstances under which the offence was committed, age and previous antecedents of the offender, the chances of his absconding and trying to prolong the trial, the chances of his trying to influence the prosecution witnesses by giving them threat or inducement etc. In this case, the allegations against the petitioner are quite grave and serious. The recovery involved amounts to commercial quantity, attracting bar of Section 37 of the Act.

The apprehension expressed by the State counsel that the petitioner may turn to path of crime again if granted the concession of

bail and there is likelihood of his trying to tamper with the prosecution evidence and even absconding and in the process delaying the trial, I find that no case for grant of regular bail to the petitioner/accused is made out. The trial against him is going on and is likely to be concluded in near future. The instant petition is bound to fail and is dismissed accordingly.

Anything said herein above shall not be construed as an expression of opinion on the merits of the case.

15.09.2021

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(H.S. MADAAN)

JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No