

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

CRM-M-6827-2020 (O&M)

Date of decision: 20.07.2021

Gurmej Singh @ Geju

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present : Mr. Arun Takhi, Advocate for the petitioner.

Ms. Bhavna Gupta, DAG, Punjab.

ANIL KSHETARPAL, J.

The hearing of the case was held through video conferencing on account of restricted functioning of the Courts.

This is the fourth petition for grant of bail pending trial in FIR No.23, dated 26.10.2017, registered under Section 21, 25, 27A and 29 of the NDPS Act, 1985 and Section 25 of the Arms Act, 1959, at Police Station SSOC Amritsar.

At the outset, it must be noticed that the first application was dismissed as withdrawn on 15.05.2018 with liberty to file fresh one with better particulars after noticing that there were certain inadvertent mistakes. The second application was dismissed as withdrawn on 01.08.2018, at that stage. The third petition was dismissed on merits after noticing that the petitioner is involved in another case i.e. FIR No.161, dated 29.09.2017,

IPC and Section 25 of the Arms Act, 1959, at Police Station Sadar Patti, District Tarn Taran.

The petitioner is in custody since 06.01.2018 i.e. nearly for 3 years and 7 months. It is an admitted position that apart from recovery of Rs.150/-, no narcotic substance has been recovered from him. He is/was involved in two previous criminal cases i.e. FIR No.210, dated 04.08.2017, under Section 307, 506, 148, 149 IPC and Section 25 of the Arms Act and FIR No.161, dated 29.09.2017, under Section 21, 25, 29 of the NDPS Act, 1985, Section 25 of the Arms Act and Section 307, 336, 353 and 186 IPC. During the argument, the learned State counsel does not dispute that the petitioner stands acquitted in FIR No.210 dated 04.08.2017. In FIR No.161, dated 29.09.2017, he has been granted the concession of bail by the High Court vide order dated 05.07.2018 passed in CRM-M-16881-2018.

In the status report, the prosecution while disclosing its case, has asserted as under:

“3. That true facts leading to this case are that the investigating officer was present in his office when the secret informer came and informed that Baldev Singh son of Jag Singh, Nishan Singh son of Baldev Singh, Gurjant Singh son of Baldev Singh, resident of Basti Kishan Singh Wali, District Ferozepur, Harmesh Singh @ Kali, Gurmej Singh @ Geju i.e. the petitioner, Krishna daughter of Lal Singh have by conspiring with each other are doing business of sale of heroin on huge scale and their friends and family member Joginder Singh @

Sammi son of Lal Singh who is confined in Central Jail, Amritsar and Nirvail Singh son of Baldev Singh, resident of Basti Kishan Singh Wali, District Ferozepur who is confined in Faridkot Jail have network established contacts with Pakistani smugglers and with their help they called for Arms and heroin from Pakistan and supply the same in Punjab and other states and today also, Baldev Singh son of Jag Singh, Nishan Singh son of Baldev Singh, resident of Basti Kishan Singh Wali, District Ferozepur, Harmesh Singh @ Kali son of Joginder Singh @ Gabbar, Krishan daughter of Lal Singh are coming on one pulsar motorcycle color black and one scootery color black from Ferozepur via Patti to Chabal Amritsar for giving of heroin and they have huge quantity of heroin and in case proper nakabandi is done on the roads coming to Amritsar these all persons along with huge quantity of heroin, arms and drug money can be caught and in this regard, the present case FIR No.23 dated 26.10.2017, under Section 21/25/27-A/29 of NDPS Act and Section 25/54 of the Arms Act has been registered at police station SSOC, Amritsar against the petitioner as well as above said accused.

4. That thereafter the police parties installed pickets (nakkas) at Bohru Adda and started checking the vehicles, in the meantime the co-accused Nishan Singh son of Baldev Singh, Baldev Singh son of Jag Singh, Harmej Singh @ Kaali son of Joginder Singh @ Gabbar Singh and Krishna daughter of Lal Singh were apprehended by the police on 26.10.2017 and after conducting the personal search of the co-accused Baldev Singh son of Jag Singh, resident of Basti Kishan Singh Wali, District Ferozepur, 3 kg of heroin was recovered from his conscious possession and after conducting personal search of co-accused Nishan Singh Rs.1,00,000/- drug money was recovered from

his conscious possession and after conducting personal search of Harmesh Singh @ Kaali, Rs.2,00,000/- drug money was recovered from his conscious possession and after conducting search of activa of Harmesh Singh @ Kaali, 3 kg of heroin was recovered in the presence of the then Sh. Kirpal Singh, PPS, Deputy Superintendent of Police, STF, Tarn Taran.

5. That during the course of interrogation, the co-accused Nishan Singh got recovered Rs.6,00,000/- drug money from tubewell of his fields and the co-accused namely Krishna daughter of Lal Singh got recovered Rs.10,71,000/- drug money from her house and during the course of interrogation of the above said accused persons, they suffered their disclosure statement to the effect that they are indulged in smuggling of heroin in connivance with Joginder Singh @ Shammi son of Lal Singh, Gurmej Singh @ Geju i.e. the petitioner, Lal Singh son of Sundar Singh, Kaushalya Devi wife of Lal Singh, all residents of village Nihala Khicha, District Ferozepur, Jagbir Singh @ Laddi son of Piara Singh, resident of Palla Mega, District Ferozepur, Tejbir Singh @ Teji son of Joginder Singh @ Gabbar, resident of Nihala Khilcha, District Ferozepur, Gurjant Singh son of Baldev Singh and Nirvail Singh @ Naila son of Baldev Singh, resident of Basti Kishan Singh Wali, District Ferozepur and on the basis of their disclosure statement, the above said accused had been nominated in the present case.

6. That during the course of investigation, the arrest of the co-accused namely Joginder Singh @ Shammi has been made in the present case on 27.10.2017, after obtaining production warrants from the learned Court of Illaqa Magistrate and during the course of interrogation of the co-accused Joginder Singh @ Shammi, he got recovered 500 grams of heroin from

his house and the co-accused Jagbir Singh @ Laddi had been arrested by the local police on 15.11.2017 and the arrest of the co-accused namely Nirvail Singh @ Naila has been made in the present case on 20.11.2017 after obtaining production warrants from the learned Court of Illaqa Magistrate and thereafter, the petitioner namely Gurmej Singh @ Geju was arrested in the present case by the local police on 24.11.2017 and the co-accused namely Kaushalya Devi and Lal Singh @ Lallu have been arrested in the present case by the local police on 11.12.2017 and during the course of investigation in the present case, the co-accused Nirvail Singh @ Naila was found innocent in the present case by the investigating officer as there was no concrete evidence came on record against him. It is submitted that no recovery has been effected from the personal possession of the petitioner namely Gurmej Singh @ Geju whereas total recovery of the case is 6.5 kg of heroin.

7. That the FSL reports pertaining to the contraband recovered in the present case have been received and according to the said reports, the salt containing in the parcel was found to be having ingredients of “diacetylmorphine” (heroin) and after completion of investigation, the final report under Section 173(2) of the Cr.P.C. has already been presented before the learned Court of Judge Special Court, Amritsar on 31.03.2018 and the trial of the case is pending for prosecution evidence wherein next date of hearing is 23.07.2021 and total 30 prosecution witnesses have been cited in the list of witness out of which 1 prosecution witness has been examined in the present case till date.

8. That it is submitted that the total 6 ½ kg of heroin as well as drug money of Rs.19,71,000/- have been recovered in the present case and the recovery effected in this case falls under

the purview of commercial quantity i.e. 6 ½ kg of heroin as mentioned in the schedule attached with the NDPS Act and the provision contained in Section 37 of NDPS Act has been attracted and there is complete bar under Section 37 of NDPS Act, to release any person on bail in case the recovery affected falls under the purview commercial quantity.”

The learned counsel representing the petitioner contends that the prosecution has failed to collect any admissible evidence to connect the petitioner with the alleged offence. He contends that neither the disclosure statement made by another co-accused is admissible in evidence nor the confession of the petitioner made in police custody can be used against him in the Court of Law. He, hence, contends that the petitioner who has already suffered incarceration for a period of 3 years and 7 months should be granted the concession of bail.

On the other hand, the learned State counsel has opposed the bail application on the ground that the three previous bail applications filed by the petitioner have been dismissed.

It is not in dispute that out of the three applications filed previously, two were dismissed as withdrawn. The third petition was dismissed after noticing that he has another case under the NDPS Act, 1985, against him. In FIR No.161, dated 29.09.2017, he has already been granted the concession of bail. The petitioner is not a previous convict. As per the status report, the prosecution intends to examine 30 witnesses on its behalf in

order to prove its case, out of which, only one has been examined in the Court till date.

The learned State counsel has failed to draw the attention of the Court to any substantive evidence/material collected to connect him with the alleged offence. He was arrested after a period of two and half months from the date of registration of the FIR. It is further significant to note that the three co-accused namely Jagbir Singh, Lal Singh and Smt. Kaushlaya Devi have already been granted the concession of bail vide orders dated 13.03.2018, 12.11.2018 and 06.03.2019, respectively.

Keeping in view the aforesaid facts, this Bench is of the considered view that the petitioner deserves to be granted the concession of bail particularly when he has already suffered incarceration for a period of 3 years and 7 months and the conclusion of the trial of the case is likely to take time.

Hence, the petition is allowed. The petitioner be released on bail subject to furnishing bail bonds and surety bonds to the satisfaction of the learned Chief Judicial Magistrate/Duty Magistrate/trial Court.

All the pending miscellaneous applications, if any, are also disposed of.

20.07.2021

ashok

(ANIL KSHETARPAL)
JUDGE

ASHOK KUMAR
2021.07.20 12:59
I attest to the authenticity
accuracy of this document

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No