

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-9798-2021 (O&M)
Date of decision: - 23.04.2021

Balbir Singh @ Bira

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Laghuinder Singh Sekhon, Advocate
for the petitioner.

Ms. Bhavna Gupta, DAG, Punjab.
(keeping in view the advance copy given).

(Through Video Conferencing)

HARSIMRAN SINGH SETHI, J. (ORAL)

CM-12427-2021

Application is allowed, as prayed for. Copy of order dated
17.02.2021 (Annexure A-1) is taken on record.

CRM-M-9798-2021

Present third petition has been filed under Section 439
Cr.P.C. for the grant of regular bail to the petitioner in FIR No.25 dated
04.02.2020, under Sections 21 and 29 of the Narcotic Drugs &
Psychotropic Substances Act, 1985 and Section 207 of the Motor
Vehicles Act, 1988, at Police Station STF Phase-IV, District SAS Nagar

(Mohali).

Learned counsel for the petitioner argues that petitioner has only been nominated by the disclosure statement of the co-accused Sukhdev Singh @ Sukhi and no recovery has been effected from him. Learned counsel for the petitioner submits that another co-accused, namely, Rahul Singh @ Babbu, who has also been nominated like the petitioner by the co-accused Sukhdev Singh @ Sukhi and no recovery was done from him, has already been granted the benefit of regular bail by this Court while deciding CRM-M-32218-2020 on 17.02.2021 and therefore, on the ground of parity, the petitioner be also granted the benefit of regular bail.

Notice of motion.

Ms. Bhavna Gupta, DAG, Punjab, who has joined the proceedings through video conference, keeping in view the service of advance copy of petition, accepts notice on behalf of the respondent-State.

Learned State counsel submits that though no recovery has been made from the petitioner, but the call locations, prima facie, shows the involvement of the petitioner in the incident. Learned State counsel further submits that there are also other cases pending against the petitioner, which shows that the petitioner is a habitual offender and therefore, he be not granted the benefit of bail in this case.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

The co-accused, namely, Rahul Singh @ Babbu has been

granted the benefit of regular bail by this Court while deciding CRM-M-32218-2020 on 17.02.2021 and the relevant order is as under: -

“Case taken up through video conferencing.

The present petition has been filed under Section 439 Cr.P.C. for the grant of regular bail in FIR No.25 dated 04.02.2020, registered under Sections 21/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short the NDPS Act) and Section 207 of the Motor Vehicles Act, 1988, at Police Station STF Phase-IV (Mohali), district SAS Nagar (Mohali).

Briefly stated, the case of the prosecution is that the police received a secret information that on 04.02.2020 the petitioner, Harminder Singh and Sukhdev Singh were selling heroin; on 03.02.2020 they had gone to Delhi for purchasing heroin and would be coming back on 04.02.2020 in different vehicles; the police laid a naka; the car in which Harminder Singh was travelling was stopped and his search yielded 1.020 grams of heroin; thereafter Sukhdev Singh was arrested and his search yielded recovery of 13 grams of heroin; the petitioner was arrested on 15.02.2020 and that the petitioner is a habitual offender as he was also involved in another case under the NDPS Act.

Seeking regular bail for the petitioner learned counsel submits that the petitioner has been falsely implicated in the present case; he is in custody for over one year; he was not arrested from the spot; no recovery of any narcotics has been effected from his person or property; the petitioner had himself surrendered before the police; in the other case against him he has been nominated as an accused only on the basis of disclosure statements of Surjit Singh and Sonia made by them in police custody which statements have no evidentiary value; report under Section 173 Cr.P.C. has already been filed and therefore he is not in a position to influence the investigation and that the petitioner's trial, which is yet to commence and in which 30 prosecution witnesses have been cited, will take a long time to conclude.

Learned State counsel opposes the grant of bail to the petitioner on the ground that he is accused of another case under the

NDPS Act and if released on bail he may indulge in similar offences.

In the present case, no recovery has been effected from the petitioner's person; he was not arrested from the spot; he himself surrendered before the police; he has been arrayed as an accused in the other case against him under the NDPS Act on the basis of disclosure statements of co-accused in police custody; he is in custody for over one year; report under Section 173 Cr.P.C. has already been filed and therefore he is not in a position to influence the investigation and his trial which is yet to commence and in which 30 prosecution witnesses have been cited, is likely to take a long time to conclude especially in the present circumstances when the world is facing the COVID-19 pandemic.

In view of the above, the present case is considered to be a fit one in which the petitioner be directed to be released on regular bail. Resultantly, subject to the satisfaction of the CJM/Duty Magistrate, Sangrur the petitioner is directed to be released on bail. It is clarified that the above observations have been made only for the limited purpose of deciding the present regular bail application and the same would not be construed to be an expression of opinion on the merits of the case.”

It is a conceded position in the present case that no recovery has been effected from the petitioner and the petitioner has only been nominated on the basis of the disclosure statement of the co-accused, namely, Sukhdev Singh @ Sukhi from whom the recovery of the contraband has been done. The petitioner is claiming parity with co-accused, namely, Rahul Singh @ Babbu. In order to deny the parity, there has to be some differentiating facts between the petitioner and co-accused Rahul Singh @ Babbu. Learned State counsel has not been able to point out any differentiating fact as far as the allegations are concerned qua the petitioner and co-accused Rahul Singh @ Babbu. Name of the co-accused Rahul Singh @ Babbu, who has been granted the bail find

mentioned in the FIR, whereas, name of the petitioner is not even find mentioned in the FIR, therefore, the petitioner is on a higher pedestal as compared with that of co-accused Rahul Singh @ Babbu, That being so, once there are no differentiating facts pointed out between the petitioner and co-accused Rahul Singh @ Babbu, petitioner becomes entitled for the grant of parity in respect of the concession of regular bail as extended to co-accused Rahul Singh @ Babbu.

As far as the argument of learned counsel for the respondent-State that the petitioner is a habitual offender and therefore, he be not granted the regular bail, cannot come in the way of the petitioner to seek parity with the co-accused Rahul Singh @ Babbu for the reason that even against co-accused Rahul Singh @ Babbu the same argument has been raised, which was not accepted by this Court while deciding CRM-M-32218-2020 on 17.02.2021. That being so, the petitioner has made out a case for the grant of bail on parity especially when learned counsel for the petitioner has stated that the petitioner will maintain good behaviour while on bail and not indulge in any illegal activities.

Learned counsel for the petitioner undertakes that petitioner will not influence the trial in any manner and in case of default of the above undertaking, the State/complainant will be at liberty to approach this Court for passing appropriate orders.

In view of the above and without commenting upon the merits of the case, it is directed that the petitioner be released on regular bail, if not required to be detained in any other case, subject to the satisfaction of the trial Court/Duty Magistrate concerned.

However, it is made clear that anything observed herein shall not be construed to be an expression of any opinion on the merits of the case.

April 23, 2021
naresh.k

(HARSIMRAN SINGH SETHI)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	No