

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

220

CRM-M-16902 of 2021
Date of decision:16.09.2021

Bagicha Singh

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Balbir Kumar Saini, Advocate
for the petitioner.

Mr. Prabhjot Singh Walia, AAG, Punjab.

SUVIR SEHGAL, J. (Oral)

Heard through video conferencing.

The petitioner is seeking regular bail in case FIR No.0262 dated 05.12.2019 registered under Sections 21, 29 (added later on) of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “NDPS Act”) and Section 25 of Arms Act, 1959 at Police Station Shahkot, District Jalandhar (Annexure P-1).

As per the case of the prosecution, FIR (Annexure P-1) has been registered on the allegation that during the course of patrolling, a motorcycle was intercepted, which was being driven by Gurwinder Singh and Jagdish Singh was sitting on the pillion. On a search, Gurwinder Singh was found to be in possession of 900 grams of heroin, one country made pistol and 3 live cartridge and Jagdish Singh was found to be in possession of 200 grams of heroin.

Counsel for the petitioner submits that the petitioner is not named in the FIR and he has been nominated as an accused on the basis of the confessional statement of co-accused, Gurwinder Singh. He submits that such a statement recorded in the police custody is not admissible in evidence. By placing reliance upon the judgment passed by a Division Bench of this Court in '**Dharamveer and another Vs. State of Punjab**' **2015 SCC Online P&H 5526**, counsel has urged that since no recovery of contraband has been effected from the petitioner, the bar as contained under Section 37(1)(b) of NDPS Act, is not attracted. He submits that the petitioner is an agriculturist and he is involved in two other cases, out of which he is on bail in one case but he has been falsely framed in all the cases. He submits that the petitioner is no longer required for custodial interrogation as the challan has been presented and the petitioner, who was in custody since 06.01.2021, deserves to be released on bail.

Per contra, State counsel upon instructions from ASI Buta Ram, has submitted that the total quantity recovered from the co-accused falls within the ambit of commercial quantity and the rigour of Section 37 of NDPS Act, is attracted. He has filed the custody certificate dated 15.09.2021, which is taken on record. He has opposed the petition on the ground that the petitioner is involved in two other cases under the NDPS Act and Arms Act, 1959 and his antecedents do not warrant his release. As per his instructions, the challan against two other co-accused has been filed on 22.05.2020 and supplementary challan against the petitioner has been

presented on 24.02.2021, though the charge is yet to be framed.

Having considered the facts and circumstances of this case, the Court is of the view that since the petitioner has been arraigned as an accused on the basis of the disclosure statement, legality and veracity of which is yet to be tested, the trial is yet to start, the petitioner, who is in custody for nine months, deserves to be enlarged on bail during the pendency of the trial.

Without commenting on the merits or demerits of the case, the petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate.

While being released on bail, the petitioner shall furnish an undertaking to the effect that henceforth, he will not indulge in any sale, purchase, trade, etc. of any prohibited substance and in case, he violates the undertaking, it will be open to the prosecution to seek cancellation of the bail.

It is clarified that any observation made hereinabove shall not be construed to be a reflection of opinion on the merits of the case.

September 16, 2021
savita

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes
Whether Reportable	Yes