

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

CRM-M-23694-2020(O&M)

Date of decision:-23.8.2021

Gurjant Singh

...Petitioner

Versus

State of Punjab

...Respondent

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

Present: Mr.S.K. Passi, Advocate
for the petitioner.

Mr.H.S. Sandhu, AAG, Punjab.

H.S. MADAAN, J.

Case taken up through video conferencing.

This second petition for regular bail has been filed by petitioner – Gurjant Singh – an accused in FIR No.100 dated 30.9.2019, under Sections 21 and 29 of NDPS Act, 1985 and 25 & 27 of the Arms Act, 1959, registered with Police Station Bhikhiwind, District Tarn Taran.

In nutshell, the facts of the case as per the prosecution story are that on 30.9.2019, a police party was present in the area of a little short of Bhikhiwind within the jurisdiction of Police Station Bhikhiwind in connection with patrolling and search of bad elements. An Alto Car came from the opposite side; the driver of the car on seeing the police party in uniform travelling in police vehicle had become perplexed and tried to turn back the car, in the process, the car had fallen in the nearby paddy fields; the driver of the car was apprehended on the basis of suspicion and on being inquired, he disclosed his name and other

particulars as Gurjant Singh son of Davinder Singh, resident of Chardi Pati, Bhikhiwind. The accused and the car were searched as per rules under the supervision of DSP, Bhikhiwind, who had been summoned to the spot as desired by the accused. The accused was found to be carrying 320 gms. of heroin in a polythene placed in right pocket of his wearing pant. The recovered heroin was taken into police possession. The accused was arrested in this case. The search of the car revealed that a pistol of .32 bore, which was loaded with two cartridges and one rifle .315 bore, which was loaded with five live cartridges, were recovered. Those were also taken into police possession. After registration of the formal FIR, the case was investigated. The petitioner/accused had approached the Court of Sessions at Tarn Taran by filing an application for grant of regular bail, which was assigned to learned Additional Sessions Judge, Tarn Taran. However, that application was dismissed by the said Court vide a detailed order dated 21.11.2019, as such, the petitioner had approached this Court with the same request by filing a petition bearing CRM-M-51704-2019, which was withdrawn by the counsel representing the petitioner on 3.3.2020 and it was dismissed accordingly. Now the petitioner has come to this Court again seeking that very relief, which request is being opposed by the State Counsel.

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

The allegations against the petitioner are very grave and serious that he was found in possession of narcotics in the form of 320 gms. of heroin amounting to commercial quantity as well as .32 bore

pistol with two live cartridges and .315 bore rifle with five live cartridges. That goes to show that the petitioner/accused was indulging in narco-terrorism. The contraband recovered from the petitioner/accused amounts to commercial quantity. The petitioner/accused travelling in a car carrying the alleged weapons along with the contraband goes to show that he was indulging in drug trafficking and was carrying the alleged weapons to attack the police personnel or any other member of the law enforcement agency, who could stop him from indulging in smuggling of drugs. Such type of criminals, who are danger to the society by making the people take to drugs not hesitating to use firearms against the persons opposing their such illegal activities do not deserve any sympathy. The petitioner is said to be involved in another case under NDPS Act, such case bearing FIR No.454 dated 25.12.2020, under Section 22 of NDPS Act and 52 of Prison Act, P.S. City, Faridkot. That shows his criminal bent of mind. As per the custody certificate filed by the State counsel, the petitioner/accused is behind bars in this case for about 1 year, 10 months and 17 days. No doubt our Constitution guarantees right of life and liberty to all citizens but if a citizen is found to be indulging in committing crime of grave and serious nature posing danger to the peace and tranquility in the society, then liberty of such a person can certainly be curtailed being in the interest of the society. Another factor to be considered is that the contraband recovered from the petitioner amounts to commercial quantity attracting bar of Section 37 of NDPS Act. Section 37 of NDPS Act provides as under:

Offences to be cognizable and non-bailable.—

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for 3 [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of subsection (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.

In the present case, I do not see any reason to record satisfaction that there are reasonable grounds for believing that the petitioner is not guilty of such offence and that he is not likely to commit any offence while on bail.

Learned counsel for the petitioner/accused has raised certain objections with regard to merits of the case contending that petitioner is innocent and a false case has been planted upon him. But then the matter to be decided by this Court is whether the petitioner is entitled to grant of regular bail or not and guilt of the accused is not to be determined in these proceedings since it is sole prerogative of the trial Court. The petitioner may point out any alleged short-coming, infirmity or illegality in the

procedure adopted while apprehending the accused and effecting recovery from him to the trial Court, which may consider the same in accordance with law. But here this Court is not supposed to conduct a parallel trial and look into the pleas on merits raised by learned counsel for the petitioner. At the time of determining the entitlement of an accused for grant of bail, the factors, which need to be looked into are quite different from the factors, which are to be viewed while determining the guilt of an accused. Here the Court is mainly to see the story set up by the prosecution without conducting any deep probe with regard to its merits and consider the version set by the defence.

Therefore, finding no merit in the petition, the same stands dismissed.

23.8.2021
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No