

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-50823-2018

Date of Decision: 06.08.2021

Balwinder Singh

....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Sukhsandesh Chahal, Advocate, for
Mr. Keshav Pratap Singh, Advocate for the petitioner.

Mr. Randhir Singh Thind, DAG, Punjab.

Through Video Conferencing

JASGURPREET SINGH PURI, J. (Oral)

The present petition has been filed under Section 439 of Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No.52 dated 05.10.2018, under Section 21 of NDPS Act, 1985, registered at Police Station STF Phase-IV, SAS Nagar, Mohali (Punjab).

The learned counsel for the petitioner has submitted that the petitioner is in custody since 05.10.2018 and there was an alleged recovery of 270 grams of heroin from him. He submitted that although the charges were framed on 10.07.2019 but owing to the long custody of the petitioner, he may be granted bail.

On the other hand, Mr. Randhir Singh Thind, learned Deputy Advocate General, Punjab has submitted that although the petitioner is in custody from 05.10.2018 but there was a recovery of 270 grams of heroin

which is a commercial quantity under NDPS Act and he was apprehended on the spot. While referring to para No. No.2 of the affidavit filed by Deputy Superintendent of Police, Special Task Force, SAS Nagar, Mohali, he has submitted that the petitioner is involved in 7 cases pertaining to NDPS Act, although out of these 7 cases he has been acquitted in 3 cases but he has also been convicted in one case and with regard to the remaining 3 cases, the same are still pending. Apart from the same while referring to para No.3 of the affidavit, he has submitted that the petitioner is also involved in 4 more cases under the IPC and that the is petitioner is a habitual offender. The details of cases as contained in para No.2 and 3 are reproduced as under:-

“2. That in compliance to the said directions, it is submitted here that on inquiry, it was known that the following 7 cases/FIRs under NDPS Act are registered against the petitioner and the details of the same are given below for ready reference of this Hon'ble Court:-

- a) FIR No.28, dated 09-04-2013, under section 21/61/85 of NDPS Act, P.S.Sadar Banga, District Nawan-Shaher/SBS Nagar, wherein the petitioner was convicted on 18-11-2014.
- b) FIR No.122, dated 26-09-2013, under sections 15/25/61/85 of NDPS Act, P.S Banur, District SAS Nagar/Mohali, wherein the petitioner was acquitted on 18-10-2018.
- c) FIR No.18, dated 15-09-2015, under Section 22/61/85 of NDPS Act, P.S. Singh Bhagwanpur, District Ropar, wherein the petitioner was acquitted on 28-11-2017.
- d) FIR No.91, dated 23.10.2016, under sections 21/61/85 of NDPS Act, P.S. Kiratpur Sahib, wherein the petitioner was acquitted on 03-06-2017.

- e) FIR No.5, dated 24-08-2017, under sections 21/61/85 of NDPS Act, P.S. STF Mohali, trial of which is still pending.
- f) FIR No.12, dated 25-10-2017, under sections 21/29/61/85 of NDPS Act, P.S. STF Mohali, trial of which is still pending.
- g) FIR No.52, dated 05-10-2018, under section 21/31/61/85 of NDPS Act, P.S. STF Mohali, which is under investigation. (FIR of the present case).

3. That apart from above said six cases of NDPS Act, the following four cases were also found to be registered against the petitioner:-

- a) FIR No.119, dated 27-05-2007, under sections 411/414/399/402 of IPC and 25 of Arms Act, P.S Sadar Ropar, wherein the petitioner was acquitted on 28-04-2014.
- b) FIR No.74, dated 18-05-2008, under section 174-A of IPC, P.S. Sadar Ropar, wherein the petitioner was convicted on 10-06-2011.
- c) FIR No.128, dated 25-06-2009, under section 379 of IPC, P.S.Model Town, Ludhiana, wherein the petitioner was convicted on 13-03-2010.
- d) FIR No.97, dated 16-09-2017, under section 489 of IPC, P.S.Sadar Ropar, trial of which is still pending.

The learned Deputy Advocate General, Punjab has further submitted that even otherwise the out of the 20 witnesses 15 have been examined and since the recovery from the petitioner was of a commercial quantity, the petitioner is not entitled to bail under Section 37 of the NDPS Act.

I have heard the learned counsel for the parties.

Although the petitioner is in custody since 05.10.2018 but the charges were framed on 10.07.2019 and out of 20 cited witnesses 15 have

already been examined and the alleged recovery from the petitioner was 270 grams of heroin which is of a commercial quantity and therefore, the bar contained under Section 37 of the NDPS Act would apply in the present case. Although departure can be made from the bar contained under Section 37 of NDPS Act but here there is no ground for making a departure. Apart from the same, the antecedents of the petitioner as stated in the affidavit filed by the State as reproduced above would also disentitle the petitioner for grant of bail.

In above of the above, the present petition is hereby dismissed.

06.08.2021

rakesh

**(JASGURPREET SINGH PURI)
JUDGE**

Whether speaking	:	Yes/No
Whether reportable	:	Yes/No