

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-M-26107-2020 (O&M)
Date of Decision: 09.09.2021

Gurbir Singh @ Gora

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Vipul Jinder, Advocate for the petitioner.

Mr. Ajay Pal Singh Gill, DAG, Punjab
assisted by ASI Sukhbir Singh.

(proceedings conducted through video conferencing)

GURVINDER SINGH GILL, J. (Oral)

1. The petitioner has approached this Court seeking grant of regular bail in respect of a case registered against him vide FIR No.12 dated 20.01.2020 at Police Station Bhikhiwind, District Tarantaran, under Sections 21/61/85 of the NDPS Act.
2. The allegations, in nutshell, are that the petitioner was apprehended by the police and since it was suspected that he was carrying some contraband, an offer in terms of Section 50 of the NDPS Act was extended to him and upon which the petitioner opted to be searched in the presence of a Gazetted Officer. Consequently, the search of the petitioner was affected in the presence of a Gazetted Officer and a polythene bag was recovered from the right pocket of his “pyjama” in which there was another lockable bag, which contained heroin. Upon

- weighment of the same along with polythene bag, it was found to weigh 267 gms.
3. Learned counsel for the petitioner has submitted that he has falsely been implicated in the present case and that, in any case, since as per the case of the prosecution, it is a case of recovery of contraband which is alleged to be marginally above the quantity prescribed as 'commercial' quantity, the petitioner deserves to be given benefit of doubt as regards the quantity inasmuch as the weighment of the contraband was done along with 2 polythene bags including a lockable bag and as such it would be debatable as to whether the weight of the recovered heroin minus the bags was more than 250 gms or not. Learned counsel for the petitioner has further submitted that the petitioner alongwith his wife had met with an accident in which he lost his wife and he became crippled and in these circumstances, he is hardly able to move about so as to be indulging in drug peddling. Learned counsel in this regard has referred to his medical certificates annexed as Annexure P-4.
4. Opposing the petition, learned State counsel has submitted that since it is a case of recovery of 267 gms of heroin, which falls within the category of 'non-commercial' quantity, no case for grant of bail is made out. Learned State counsel has further submitted that the petitioner cannot be given any benefit of doubt as regards the weighment inasmuch as the weight of polythene bags cannot be said to be 17 gms. Learned State counsel has, however, informed that the petitioner as on date has been behind bars since the last about 1 year 7 months and 15 days. Learned State counsel has further informed that

apart from the instant case, the petitioner is involved in 2 other cases including one case regarding recovery of small quantity.

5. I have considered rival submissions addressed before this Court.
6. Having regard to the fact that the weighment of the contraband was done along with two polythene bags including a lockable bag, it will certainly be debatable as to whether the recovered quantity, which was weighing 267 gms along with two bags, can actually be said to be more than 250 gms so as to qualify to be termed as 'commercial' quantity. In any case, since the petitioner has been behind bars for a substantial period of 1 year, 7 months and 15 days and while also noticing the fact that the trial has not even commenced inasmuch as not even a single PW out of cited 12 PWs has been examined, further detention of the petitioner will not serve any useful purpose. The petition, as such, is accepted and the petitioner is ordered to be released on regular bail on his furnishing bail bonds/surety bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

09.09.2021

VY

(GURVINDER SINGH GILL)

JUDGE

Whether speaking/reasoned: **Yes/No**
Whether reportable: **Yes/No**