

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(103+206)

CRM No. M-42555-2020 (O&M)
Date of Decision : 18.01.2021

Talwinder Singh alias Binder

....Petitioner

Versus

The State of Punjab

.....Respondent

(through video conferencing)

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Charanpreet Singh, Advocate for the petitioner.

Mr. Harpreet Singh Multani, A.A.G., Punjab.

Harsimran Singh Sethi, J. (Oral)

CRM-783-2021

Present application has been filed for placing on record the documents as Annexures A-1 and A-2.

Application is allowed and the documents as Annexures A-1 and A-2 are taken on record.

CRM No. M-42555 of 2020

Custody certificate of the petitioner has been filed in Court today. The same is taken on record.

The present petition has been filed under Section 439 Cr.P.C. for the grant of regular bail to the petitioner in FIR No. 38 dated 20.04.2019, under Section 21 of the Narcotic Drugs & Psychotropic

Substances Act, 1985, registered at Police Station Kathgarh, District SBS Nagar.

Learned counsel for the petitioner argues that petitioner has been declined the benefit of bail by the Courts below on the ground that 260 grams of Heroin was recovered from the petitioner, which is of commercial quantity. Learned counsel for the petitioner submits that the Courts below have failed to appreciate that rather than weighing the contraband only, the said contraband was weighed alongwith the carry bag, which is clear from the FIR itself so as to arrive at the finding that the Heroin recovered from the petitioner was 260 grams. Learned counsel further submits that the recovery, which was done from the petitioner was actually less than the commercial quantity or at the most, it can be said that quantity of the recovered contraband is marginally above the commercial quantity even after including the weight of the carry bag containing the said contraband.

Learned counsel appearing on behalf of the respondent-State though opposes the prayer of the petitioner for the grant of bail but concedes that the contraband was weighed alongwith the carry bag, wherein, total weight of the contraband was 260 grams. Learned State counsel is not able to give any reason as to why, the contraband was weighed alongwith the carry bag. Learned State counsel further submits that there are other cases pending against the petitioner though, it is conceded by the learned State counsel that in all the other cases, the petitioner has either been acquitted or is already on bail.

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

Once, the contraband recovered from the petitioner was weighed alongwith the carry bag containing the same and the total weight of the contraband including that of the carry bag was 260 grams, it will be during the trial only, the factum whether the petitioner was carrying a commercial quantity of contraband or not will be proved. The petitioner is already on bail in the other cases pending against him.

That being so, once, the question whether the petitioner was carrying commercial quantity of contraband or not, is still to be adjudicated, the petitioner has made out a case for the grant of bail.

The petitioner be released on regular bail in this case subject to the satisfaction of the trial Court/Duty Magistrate concerned.

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

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.

January 18, 2021
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether reasoned/speaking? Yes/No
Whether reportable? Yes/No