

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

CRM-M-3963-2022(O&M)
Date of decision : 04.02.2022

Mike Joseph

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr.Yashpal Thakur, Advocate
for the petitioner.

Mr.Karanbir Singh, AAG, Punjab.

(Through Video Conferencing)

VIKAS BAHL, J.(ORAL)

This is a first petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR no.114 dated 16.09.2021 registered under Section 21-C/61/85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'NDPS Act') at Police Station Mulepur, District Fatehgarh Sahib.

The FIR in the present case has been registered on the allegation that secret information was received by SI Manjeet Singh to the effect that the petitioner along with one other accused used to deal in heroin and could be apprehended if Naka be installed at appropriate place. In pursuance of the secret information, the petitioner and co-accused were apprehended while coming from Rajpura side towards Macdy Patarsi and from the co-accused, recovery of 260 grams of heroin was effected and from

quantity with respect to heroin starts from 250 grams.

Learned counsel for the petitioner has submitted that in the present case, the petitioner has been falsely implicated inasmuch as the petitioner was picked up from New Delhi one day prior to the registration of the said FIR and subsequently, the petitioner has been implicated in the present case. It is further submitted that even assuming the case of the prosecution to be true on face value, even then recovery of 45 grams of heroin allegedly effected from the petitioner would fall within “non-commercial quantity” and the same cannot be clubbed with the alleged recovery effected from the other co-accused i.e. 260 grams of heroin recovered from a small bag red coloured which was tied around waist of co-accused. It is further submitted that the petitioner is not involved in any other case and has been in custody since 16.09.2021 and there are 11 prosecution witnesses and none of them have been examined. Learned counsel for the petitioner has relied upon the judgment of a coordinate Bench of this Court passed in **CRM-M-2349-2016** titled as “**Buta Singh @ Buti vs. State of Punjab**” decided on 26.02.2016 in support of his argument, that in such a situation, recoveries so effected, cannot be clubbed.

Learned State counsel, on the other hand, has opposed the present petition for regular bail and has submitted that the recovery has been effected when the petitioner, along with co-accused, was going towards Macdy Patarsi on foot. It is further submitted that initially they had come together in a cab.

This Court has heard learned counsel for the parties and has perused the record.

It is not in dispute that as per the remand papers (Annexure P-

3) the recovery effected from the present petitioner is of 45 grams of heroin and recovery effected from the co-accused is of 260 grams of heroin. The recovery made from the petitioner falls under non-commercial quantity with respect to heroin, as commercial quantity starts from 250 grams. In **Buta Singh @ Buti's** case (supra), a coordinate Bench of this Court has observed that in a case, when recovery has been effected from two persons, of two different quantities, then both cannot be clubbed together. The relevant portion of the said judgment is reproduced hereinbelow:-

“Petitioner seeks benefit of regular bail pending trial in case FIR No.49 dated 26.08.2015, under Sections 21/61/85 of the NDPS Act, registered at Police Station Amir Khas, District Ferozepur.

Perusal of the impugned order dated 30.10.2015 passed by learned Judge, Special Court, Ferozepur would reveal that the concession of bail has been declined to the petitioner on the ground that 310 grams of heroin was recovered from the conscious possession of present petitioner, Buta Singh @ Buti as also co-accused, Gurmail Singh and in the light of the same, falling within the scope of commercial quantity, the rigors of Section 37 of the NDPS Act would apply.

Having heard counsel for the parties, this Court is of the considered view that the petitioner is held entitled to the benefit of bail.

Perusal of the FIR would in itself reflect that the case of the prosecution is not that of a joint recovery. The alleged recovery effected from the co-accused, Gurmail Singh from the right pocket of his pyjama was of 255 grams of heroin. The alleged recovery from the conscious possession of the present petitioner is stated to be of 55 grams. As per prosecution version, separate sample parcels were prepared and even Form M-29 was

prepared separately.

*The Hon'ble Apex Court in **Amarsingh Ramjibhai Barot Vs. State of Gujarat, 2005(7) SCC, 550** has observed that when two accused are found together carrying contraband, the quantity of contraband carried by both the accused is not be added to bring it within the meaning of commercial quantity.*

Concededly, the alleged recovery from the present petitioner is of 55 grams of heroin which would be construed as noncommercial. It has also been conceded that the petitioner is not involved in any other case under the NDPS Act.

For the reasons recorded above, the present petition is allowed. Petitioner be enlarged on bail subject to the satisfaction of the Chief Judicial Magistrate/Duty Magistrate, Ferozepur.

Disposed of.”

In the present case, recovery effected from the present petitioner is 45 grams of heroin and from co-accused is of 260 grams of heroin. The facts of the above said case are thus, similar to the facts of the present case.

Thus, keeping in view the above said facts and circumstances moreso, the fact that recovery from the petitioner is of non-commercial quantity, i.e. of 45 grams of heroin as well as the fact that the petitioner has been in custody since 16.09.2021 and the fact that there are 11 prosecution witnesses and none of them have been examined and also the fact that the petitioner is not involved in any other case, the present petition for regular bail is allowed and the petitioner is ordered to be released on bail on his furnishing bail / surety bonds to the satisfaction of the concerned trial Court/ Duty Magistrate and subject to him not being required in any other

Nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

(VIKAS BAHL)
JUDGE

Davinder Kumar

Yes/No

Yes/No