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

CRM-M No. 6064 of 2022 (O&M)
Date of Decision: 13.05.2022

Sushil Kumar Choore

-Petitioner

Vs

State of Punjab

-Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

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

Mr. C.L. Pawar, Sr. D.A.G., Punjab.

RAJ MOHAN SINGH, J. (ORAL)

CRM-17427-2022

For the reasons mentioned in the application, the same is allowed and the accompanying document is taken on record, subject to all just exceptions.

Main case

Petitioner seeks grant of regular bail in his second attempt under Section 439 Cr.P.C. in case bearing FIR No.57 dated 25.06.2019 under Sections 21, 27-A, 29 of NDPS Act registered at Police Station STF, District SAS Nagar, Mohali.

Petitioner got CRM-M No.1246 of 2021 dismissed as withdrawn on 09.08.2021.

As per prosecution story, on the basis of secret information, a naka was laid. One white Creta car was seen coming from the side of Army Cantt. on the link road at a high speed. Four persons were sitting therein. On seeing the police party, all the four persons tried to turn their car back, however, the car was stopped by the police party and all the four occupants were caught. The persons were found to be Gaurav Sharma, Ashwani Kumar, Pawan Kumar and Rajinder Singh. On the basis of disclosure statements of co-accused, the petitioner was implicated. 255 grams of Heroin was recovered from Ashwani Kumar from his pocket and 50 grams of Heroin was recovered from Gaurav Sharma from his pocket. Drug money to the tune of Rs.1,16,000/- was recovered from the car. The case property was taken into police possession. It was only on the disclosure statements of Gaurav Sharma and Ashwani Kumar, the alleged complicity of the petitioner came to fore being supplier of the heroin.

Learned counsel for the petitioner submits that in pursuance of disclosure statements, the police raided the barrack of the petitioner and the petitioner got recovered three packets of heroin wrapped in a polythene from the wooden almirah near his bed lying in the barrack. On instructions of Deputy Superintendent of Police, the polythene bag was opened

and three packets were recovered. All the three packets were opened and were weighed collectively. On weighment, 1 Kg 15 grams of Heroin was found in all the three packets.

Learned counsel for the petitioner further submits that as per chemical analysis, only 10 grams of the contraband was subjected to chemical analysis in parcel no.1 and the parcel was found to be containing Diacetylmorphine to the extent of 59.10%.

Learned counsel for the petitioner further submits that the prosecution was required to take distinct samples from each polythene bag allegedly containing the contraband and each bag ought to have been weighed separately. The percentage of narcotic found in parcel no.1 would not give correct value of the contraband in all the three packets allegedly mixed up before taking representative sample. The prosecution has not disclosed as to whether the representative sample was drawn after making the contents of all the three packets homogenous.

Learned counsel refers to order dated 30.06.2021 passed in CRM No.19744 of 2019 in CRA-S-1464 of 2019 titled **'Jaswinder Singh vs The State of Punjab'**, CRM-M No.32387 of 2020 titled **'Gurlal Singh @ Gullu vs State of Punjab'** decided on 28.07.2021, CRM-M No.10508 of 2017 titled **'Kulwinder Singh @ Lalli vs State of Punjab'** decided on

25.05.2017, order dated 15.12.2021 passed in CRM No.37718 of 2021 in CRA-S No.1794 of 2019 titled '**Surjeet Singh and another vs State of Punjab**' and order dated 21.05.2019 passed in CRM No.5529 of 2019 in CRA-S No.2621-SB of 2016 titled '**Makhan Khan vs State of Punjab**' to contend that making of contents homogenous is a condition precedent for lawful drawl of representative sample from the total contraband allegedly recovered from the petitioner. Learned counsel also refers to judgment of the Division Bench in CRA-D No.664-DB of 2012 titled 'State of Punjab vs Balwinder Singh @ Bindi' decided on 10.10.2012 to contend that each bag was required to be weighed separately and distinct sampling should have been done from each bag. Learned counsel further submits that on 28.04.2022, learned State counsel pointed out that the petitioner is also involved in FIR No.0147 dated 24.04.2022 registered under Section 21(b) of NDPS Act and Sections 42 and 52-A of the Prisons Act at Police Station Islamabad, District Police Commissionerate, Amritsar.

In order to clarify the status of the petitioner in the aforesaid FIR, petitioner has filed additional document Annexure P-18 in the context of aforesaid FIR to show that only a mobile without sim was recovered from the petitioner. FIR was registered only for the offence under NDPS Act on the basis of

heroin recovered from other inmates and not from the petitioner.

This fact has been admitted by learned State counsel on instructions from SI Sumeet Singh. Petitioner is not involved in any other case under NDPS Act.

Petitioner is in custody since 25.06.2019.

All other co-accused have already been granted regular bail.

Learned counsel for the petitioner also refers to CRM-M No.20566 of 2019 titled '**Veeru vs State of Punjab**' decided on 19.11.2019, CRMM No.41779 of 2020 titled '**Gurpreet Singh vs State of Punjab**' decided on 17.12.2020, CRM-M No.17481 of 2020 titled '**Mani Singh @ Maddi vs State of Punjab**' decided on 22.07.2020, CRM-M No.25382 of 2020 titled '**Gurbaksh Singh vs State of Punjab**' decided on 02.09.2020 and submits that by virtue of long incarceration of the petitioner, petitioner is entitled for regular bail de hors the nature of quantity. This is so particularly in view of his non-involvement in any other case.

In view of aforesaid facts and circumstances of the case, I deem it appropriate to grant regular bail to the petitioner.

Without meaning anything on the merits of the case, the petition is allowed. Petitioner is directed to be released on regular bail, subject to his furnishing adequate bail bonds/surety

bonds to the satisfaction of trial Court/concerned Duty Magistrate.

Nothing expressed hereinabove would be construed to be an opinion on the merits of the case.

13.05.2022
Jyoti Sharma

(RAJ MOHAN SINGH)
JUDGE

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No