

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

202

CRM-M-6561-2021

Date of Decision: 05.05.2022

Gurmeet Singh

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE LALIT BATRA

Present: Mr. R.S.Sekhon, Advocate for petitioner.

Mr. Rana Harjasdeep Singh, Deputy Advocate General, Punjab.

Lalit Batra, J.(Oral)

Present second petition under Section 439 Cr.P.C has been moved by petitioner-**Gurmeet Singh** for grant of regular bail in case FIR No.111 dated 12.08.2018 under Sections 18 and 21 of NDPS Act, registered at Police Station Sadar Fazilka, District Fazilka.

Reply dated 01.05.2022 by way of affidavit of Jora Singh, PPS, Deputy Superintendent of Police, Sub-Division, Fazilka, District Fazilka, along with Annexure R/1 (copy of FSL report) filed today in the Court by respondent-State, is taken on record and copy thereof has been supplied to learned counsel for petitioner.

Learned counsel for the petitioner *inter alia* contends that allegations levelled against the petitioner are altogether false and frivolous and there is no iota of truth therein. He further submits that allegedly

contraband (Heroin weighing 260 grams) was recovered from the petitioner, whereas petitioner has no nexus whatsoever with the contraband. He further urges that allegedly contraband (Opium weighing 50 grams) was recovered during the personal search of co-accused Kulwant Singh @ Kalu. He further urges that in view of ratio laid down in ***Amar Singh Ramjibhai Barot Vs. State of Gujarat, (2005) AIR (SC) 4248***, recovery has to be treated as individual recovery because the same was effected in personal search of petitioner. He further urges that in view of ratio laid down in ***Sandeep Kumar Vs. State of Punjab, 2019(4) RCR (Criminal) 741***, recovery of the contraband would remain debatable. He further urges that in terms of reply dated 01.05.2022, as detailed above, it reveals that contraband (Heroin) allegedly recovered from petitioner was weighed inclusive of polythene envelope and the weight thereof came to 260 grams. He further urges that weight of polythene envelope may vary from 5 to 10 grams and in that eventuality, actual weight of contraband shown to be 260 grams may vary and as such alleged recovery of contraband would be less than 250 grams, which is “non-commercial quantity”. He further urges that sub-clause (viia) of Section 2 of NDPS Act defines the term “commercial quantity” in relation to narcotic drugs and psychotropic substances, means any quantity greater than the quantity specified by the Central Government by Notification in the Official Gazette. He further urges that in terms of Serial No.56 of the Table attached to the NDPS Act when read in consonance with sub-clause (viia) of Section 2 of NDPS Act, 'Heroin' weighing upto 250 grams is to be termed as “non-commercial quantity” and as such alleged contraband is to be

categorized as “non-commercial quantity”. He further submits that co-accused Kulwant Singh @ Kalu has already been extended concession of regular bail by this Court, vide order dated 04.02.2019 passed in CRM-M-50898-2018. He further submits that petitioner is languishing in custody since 12.08.2018 and he is no more required by the Police for any investigation purpose as after completion of investigation, final report under Section 173 Cr.P.C. (*Challan*) has already been presented in Court. He further urges that since trial of the case would take sufficient time to conclude, no useful purpose would be served by keeping the petitioner in custody further and he may be released on bail.

On the other hand, learned State counsel while opposing instant petition has vehemently argued that keeping in view seriousness of offence, petitioner does not deserve the concession of bail.

I have heard learned counsel for the parties and have carefully gone through the contents of petition as well as reply furnished at the instance of respondent-State.

At this stage, without commenting anything on the merits of the case lest it may prejudice the outcome of the trial but taking into consideration the fact that petitioner is in custody since 12.08.2018; that petitioner is no more required by the Investigating Agency for investigation purpose; that *Challan* has already been presented in Court and since trial of the case would take sufficient time to conclude, no useful purpose would be served by detaining the petitioner in custody further, thus, he deserves the concession of bail.

In view of above, instant petition for grant of regular bail moved by petitioner-**Gurmeet Singh** is allowed and he is ordered to be released on bail on his furnishing personal/surety bonds to the satisfaction of Trial Court/ Chief Judicial Magistrate/Duty Magistrate, Fazilka, as the case may be.

(LALIT BATRA)
JUDGE

05.05.2022

Varinder Prashad

Whether speaking/ reasoned : Yes/ No

Whether Reportable : Yes/ No