

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

CRM M-5330-2020

Date of Decision: 15.07.2022

Karnail Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR.JUSTICE MAHABIR SINGH SINDHU

Present: Mr. L.S. Sekhon, Advocate,
for the petitioner.

Mr. Charanpreet Singh, AAG Punjab.

MAHABIR SINGH SINDHU. J.

Present petition has been filed under Section 439 Cr.P.C. for seeking regular bail, pending trial to the petitioner in FIR No.99 dated 21.08.2018, under Sections 15 & 25 of Narcotic Drugs & Psychotropic Substances Act, 1985 (for short “the Act”) registered at Police Station Bareta, District Mansa.

2. The above mentioned FIR was registered on the basis of *ruqa* sent by ASI Bhagwan Dass with the allegations that he along with police party were on patrolling duty. When they reached at Bahadurpur road Bareta then at cross section, Gurcharan Singh son of Babu Singh caste Jatt resident of Bahadurpur met them. He was joined with the police party. When police party reached at the bridge of minor canal, village Bakhshiwala then a truck-trailer was seen coming from the opposite side. On seeing the vehicle of police party, driver got perplexed and parked the truck trailer on a side. Two persons suddenly got down from the truck trailer. ASI Bhagwan Dass stopped the vehicle on the basis

of suspicion and apprehended both of them and asked their names and addresses. The driver told his name as Surinder Singh @ Shinda son of Garib Singh caste Jatt resident of Gurdhanpura Police Station Sirhind and he was 6 feet, aged 35 years; and the other person told his name as Karnail Singh son of Chhajju Singh caste Majhbi Sikh resident of Wazir Nagar Police Station Sirhind District Fatehgarh Sahib. His appearance was of aged 40 years, height 6 feet, built thin. ASI Bhagwan Dass told both of them that it seems they were having some intoxicating material in their trailer numbered PB-11-CF-6913, therefore, asked for their personal search as well as of truck trailer. Both were told that they have the legal right for search before any Magistrate or a Gazetted Officer. In response, both of them said in one voice that they had full faith in the ASI and he can search their body as well as the truck trailer. Their consent statement was prepared. The consent memo was signed by Surinder Singh @ Shinda and Karnail Singh and it was also signed by the witnesses. HC Jasvir Singh and PHG Gurnam Singh removed the tarpaulin from the trala and the potatoes were loaded in the trala. ASI Bhagwan Dass asked HC Jasvir Singh and PHG Gurnam Singh for checking the trala after getting into it and from the last line of the bags of potatoes and under three bags of potatoes, 2 plastic bags were recovered. Both the plastic bags were removed from the trala to the ground by HC Jasvir Singh and PHG Gurnam Singh. The plastic bags were opened and from both the bags, poppy husk was recovered and which were weighed with the help of spring balance turn wise. First bag weighed 40 kilograms of poppy husk and it was given as mark 1 and then the second plastic bag weighed 40 kilograms of poppy husk and it was given number 2. After tying both the plastic bags, they were sealed with seal of 'BD'. Sample seals were prepared separately. The contraband was taken into police possession. A *ruqa* for registration of case was sent to the Police Station.

3. This Court, on 24.09.2021, while granting interim bail to the petitioner, passed following order:-

“Submits that petitioner is in custody since 21.08.2018 and for the last five consecutive dates of hearing, there is no progress in trial.

Learned State counsel will verify the above factual position.

Posted on 26.11.2021.

In the meanwhile, petitioner be released on interim bail in the present case till the next date of hearing, on his furnishing adequate bail and surety bonds subject to the satisfaction of learned trial Court/CJM/Duty Magistrate concerned. ”

4. Learned counsel, on instructions from petitioner submits that there is a violation of mandatory provisions of Section 50 of the Act inasmuch as the investigating officer had recorded a joint consent memo of both the accused and no Gazetted Officer was associated at the time of alleged recovery. Also contends that Bhagwan Dass himself is the complainant as well as the investigating officer. Further submits that petitioner is regularly appearing before learned trial Court, but there is no progress at all. Further contends that petitioner is not involved in any other case. Also contended that there is no apprehension or allegation that he would tamper with the evidence or influence the witnesses, in case, petitioner is granted bail on regular basis.

5. Learned State counsel was not able to dispute the contentions raised by learned counsel for the petitioner; rather he acknowledged that petitioner is regularly appearing before the learned trial Court.

6. In view of the above, there is no hesitation to record twin-test satisfaction in terms of Section 37 of the NDPS Act to the following effect:-

As noticed in para 4, *prima-facie*, there is a violation of Section 50 of the NDPS Act at the time of seizing the alleged contraband; thus, it can be termed as a reasonable ground for believing that petitioner is not guilty of

offence at this stage. He was granted interim bail and has not misused the concession thereof; thus not likely to commit any offence in case released on regular bail.

7. In such a situation, sending the petitioner to judicial custody at this stage would not serve any purpose. Consequently, the present petition is allowed and interim bail granted vide order dated 24.09.2021, is made absolute. Petitioner be admitted to bail on his furnishing bail/surety bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

8. Petitioner shall fully co-operate with the learned trial Court without seeking any unnecessary adjournments.

9. The observations made above are only for the limited purpose of deciding present bail application and may not be construed as an expression of opinion on the merits of the case.

10. It is clarified that in case there is any misuse of concession of bail on the part of the petitioner, State of Punjab would be at liberty to move an appropriate application for recalling of this order.

15.07.2022
SN

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable: Yes/No