

(226) IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-13263-2022
Date of Decision: 20.07.2022

Sukhwinder Singh @ Sonu

... Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Malhar Singh Dhami, Advocate
for the petitioner.

Mr. Kirat Singh Sidhu, D.A.G, Punjab.

JASJIT SINGH BEDI, J.

The prayer in the present petition is for the grant of regular bail under Section 439 Cr.P.C in case bearing FIR No.0010 dated 04.02.2022 (Annexure P-1) registered under Section 22 (Subsequently added Sections 29, 61, 85 vide Rapat No.19 dated 06.02.2022) of NDPS Act at Police Station Kathgarh, District S.B.S. Nagar.

2. The brief facts of the case are that while the police party was on patrolling duty, they saw a young man coming on a motorcycle from the front, he was asked to stop. He threw a black colour polythene packet in the grass near the cremation ground, which was hanging on the handle of his motorcycle and nervously attempted to turn back. The intoxicating injections came out from the packet and were strewn all over. The motorcycle slipped and fell and the registration number of the motorcycle was read as PB-32-S-6483 Made Platina. On being confined, he disclosed his name as Sarbjit Singh son of Shingara Singh. A recovery of 09 injections of Bupine Buprenorphine containing 02 ML each along with 09 injections of Avil containing 10 ML each have been effected from him. Pursuant thereto, he disclosed the name of the present petitioner during investigation and the petitioner was nominated as an accused.

3. The learned counsel for the petitioner *inter alia* contends that the recovery from Sarbjit Singh is of non-commercial quantity of contraband. The petitioner has not been named in the FIR and his name figures in the disclosure statement of his co-accused. Reliance is placed on the judgments passed in the cases of ***“Tofan Singh versus State of Tamil Nadu, 2020 AIR(Supreme Court) 5592’***, ***‘Rakesh Kumar Singla versus Union of India 2021 (1) RCR (Criminal) 704’***; ***‘Surinder Kumar Khanna versus Intelligence Officer Directorate of Revenue Intelligence, 2018(3) RCR(Criminal) 954’***; ***‘State by (NCB) Bengaluru versus Pallulabid Ahmad Arimutta & Anr. 2022(1) RCR (Criminal) 762’*** and ***‘Sanjeev Chandra Agarwal & Anr. Versus Union of India 2021(4) RCR (Criminal) 590’***, to contend that such disclosure statements are inadmissible in evidence. He contends that the provisions of Sections 42 and 50 of the NDPS Act have not been complied with at the time of the recovery of the contraband from Sarbjit Singh. Even otherwise, Sarbjit Singh has been granted the concession of regular bail by the Trial Court vide order dated 26.05.2022 and the case of the petitioner is on a better footing. It is lastly contended that none of the 09 prosecution witnesses have been examined so far and the petitioner has been in custody since 06.02.2022. And even otherwise, he deserves the concession of regular bail as the provisions of Section 37 of the NDPS Act will not apply to the recovery in the present case, it being of non-commercial quantity.

4. On the other hand, the learned State counsel admits the period of custody undergone by the petitioner but contends that the petitioner does not deserves the concession of regular bail as he is a prior convict in FIR No.107 dated 01.09.2013 registered under Sections 15, 61, 85 of NDPS Act, at Police Station Balachaur vide judgment dated 17.12.2014. However, he does not dispute the factual position that the recovery from Sarbjit Singh is of non-commercial quantity of contraband and he has since been granted the concession of bail.

5. I have heard the learned counsel for both the parties at length.

6. Admittedly, no recovery has been effected from the petitioner and the recovery from the main accused Sarbjit Singh is of non-commercial quantity of contraband. As such, the rigors of Section 37 NDPS Act will not

apply to the present case. Therefore, the further incarceration of the petitioner is not required.

7. In view of the above, without commenting on the merits of the case, the present petition is allowed and the petitioner-Sukhwinder Singh @ Sonu son of Kulwant Singh is ordered to be released on bail subject to his furnishing bail bonds and surety bonds to the satisfaction of learned CJM/Duty Magistrate, concerned.

8. The petitioner shall appear before the police station concerned on the first Monday of every month till the conclusion of the trial and inform in writing each time that he is not involved in any other crime other than the two cases enumerated in this order.

9. The petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

20.07.2022

JITESH

Whether speaking/reasoned:- Yes/No
Whether reportable:- Yes/No