

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-17701 of 2022 (O&M)

Date of Decision: 5th May, 2022

Bhupinder Singh

Petitioner

Versus

State of punjab

Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Brijesh Nandan, Advocate for the petitioner.
Mr. Sandeep Kumar, DAG, Punjab.

AVNEESH JHINGAN, J (Oral):

This is third petition seeking regular bail in FIR No. 179 dated 21.8.2020, under Section 21 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (for short, 'the Act') registered at Police Station City Rajpura, District Patiala.

Earlier two petitions were withdrawn, in order to avoid adverse order, as the counsel realized that the contentions were not finding favour. The second petition was dismissed as withdrawn on 15.2.2022.

As per the case set up, on 21.8.2020, a naka was set up in between Ambala and Rajpura on GT road. The petitioner was travelling in a car bearing registration No. PB-02-BX-2393. Three hundred grams Heroin was found lying on dash board of car, in a black coloured envelope.

Learned counsel for the petitioner submits that the story put forth by the prosecution is improbable. The petitioner was travelling from Ambala to Amritsar i.e. opposite side of the road where naka was set up, there was no chance of checking officials getting suspicious with regard to car of the petitioner. He further submits that there is non-compliance of Sections 42 and 50 of the Act. The contention is that FIR number is mentioned on the recovery memo.

Learned counsel for the State opposes the prayer for grant of bail and submits that consecutively bail applications are being filed without

there being any change in circumstances. The contention raised by learned counsel for the State is that naka was laid on Ambala to Amritsar road near Midway Dhaba, Rajpura and the petitioner as per his own case was travelling from Ambala to Amritsar. He further contends that FIR number on the recovery memo was mentioned subsequently by hand, to ensure that the document is placed in the appropriate file. The argument is that no recovery was made from the conscious possession of the petitioner and Section 50 of the Act is not applicable. The bail is opposed on the ground that the petitioner is involved in one more case under the Act.

The observations made hereinafter shall not be construed as an expression of opinion on the merits of the case and these are only for the purpose of deciding the regular bail petition.

Section 37 of the Act lays down twin conditions to be fulfilled for grant of bail where there is recovery of commercial quantity. Firstly, the court has to *prima facie* satisfy itself on reasonable grounds that the accused is not guilty of the offence and secondly, he is not likely to commit any offence while on bail.

The contention regarding non-compliance of Sections 42 and 50 of the Act are factual issues to be decided on the facts of case during trial. The petitioner is involved in another case under the Act, there cannot be reasonable ground for this court to *prima facie* satisfy itself that the petitioner is not likely to commit any offence if enlarged on bail.

The contention raised with regard to improbable story of the prosecution is based upon disputed question of fact for which evidence needs to be adduced and it would not be appropriate for this court to hold a mini trial while dealing with the petition for regular bail.

No case is made out for grant of regular bail.

The petition is dismissed.

[AVNEESH JHINGAN]

JUDGE

5th May, 2022

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

