

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

CRM-M-24505-2022

Reserved on : 14.11.2022

Date of Pronouncement: 07.12.2022

Sandeep @ Gogi

....Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. P.S. Hundal, Senior Advocate, with
Mr. Vikramjeet Singh, Advocate, for the petitioner.

Mr. Gagandeep Singh Chhina, AAG, Haryana.

HARNARESH SINGH GILL, J.

The petitioner seeks grant of regular bail in case bearing FIR No. 250 dated 27.10.2021 registered under Section 21(B)/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, at Police Station Siwan, District Kaithal.

Learned Senior Counsel appearing for the petitioner would vehemently argue that a totally false case has been planted upon the petitioner; that the petitioner has been indicted on the basis of disclosure statement of co-accused Makhan Singh; that even the said disclosure statement is not admissible in the eyes of law; that the petitioner was not arrested at the spot; that neither any recovery was effected from the petitioner nor there surfaced any material or evidence on

record, to establish that the petitioner had ever supplied the substance.

It is further submitted that so far as the other cases (7 in number) registered/pending against the petitioner, are concerned; only one case bearing FIR No. 155 dated 02.07.2021 is under the NDPS Act and the remaining case are under the IPC/Arms Act and that the petitioner is on bail on the said cases.

It is further argued that the allegations of the prosecution that the petitioner was the supplier of the heroin, in the absence of any material on record, is a debatable issue, which can only be decided by way of evidence during trial. Therefore, in terms of the judgment of the Hon'ble Supreme Court in State of West Bengal Vs. Rakesh Singh @ Rakesh Kumar Singh, 2022(4) RCR (Criminal) 299, the rigours of Section 37 of the NDPS Act, would not be applicable to the facts of the present case.

Still further, reliance has been placed upon State by (NCB) Bengaluru Vs. Pallulabid Ahmad Arimutta & Anr., 2022(1) RCR (Criminal) 762, to contend that confessional statement recorded under Section 67 of the NDPS Act, is not admissible in trial of the offences under the Act and therefore, implication of the petitioner on the disclosure statement of co-accused holds no ground.

In respect of the pendency of other cases against the petitioner, it is argued that the same cannot be a ground to deny the concession of bail to the petitioner. Reliance is placed upon

Prabhakar Tewari Vs. State of U.P. & Anr., 2020(1) RCR (Criminal) 831, wherein the bail granted to the murder accused, despite there being several cases against him, was not interfered with by the Hon'ble Apex Court.

It is further contended by the learned Senior Counsel that the FIR was registered on 27.10.2021 and the petitioner after having been indicted on disclosure statement of co-accused Makhan Singh, was apprehended on 22.03.2022 and since then he has been in custody and that co-accused Makhan Singh and Manpreet Singh, have already been granted bail by the trial Court.

On the other hand, the learned State counsel, while vehemently opposing the prayer for grant of bail, submits that the petitioner was the supplier of the heroin and, therefore, the role of the petitioner also stands on the same footing as that of co-accused, Makhan Singh, from whom the recovery was effected. It is further submitted that the allegations against the petitioner are serious and grave and in case enlarged on bail, he would get himself involved in other cases. Apart from that, it is submitted that the petitioner is a person of criminal antecedents, as 7 others cases are also pending against him, out of which one case is under the NDPS Act and therefore, the brazen antecedents of the petitioner do not entitle him to the grant of regular bail.

I have heard the learned counsel for the parties.

It is the case of the petitioner that co-accused Makhan Singh and Manpreet Singh, have already been released on bail by the trial Court and that the petitioner was not arrested at the spot and no recovery was effected from him. He had allegedly supplied the contraband to Makhan Singh, co-accused.

However, the incriminating material against the petitioner at this stage, is registration of seven more cases against him out which, one case is under NDPS Act. In respect of the case under the NDPS Act i.e. FIR No. 155 dated 02.07.2021 registered under Section 21-B of the NDPS Act, the petitioner was released on anticipatory bail by a Coordinate Bench of this Court vide order dated 06.09.2021.

As noticed above, the petitioner has been indicted on the basis of disclosure statement of co-accused Makhan Singh. The co-accused, including said Makhan Singh, from whom the recovery was made, have already been granted bail. The recovery effected from co-accused Makhan Singh is of 31.05 gm of heroin, which falls under non-commercial quantity and therefore, the rigours of Section 37 of the NDPS Act, would not be attracted. The petitioner has been in custody since 22.03.2022. Post presentation of challan and framing of the charges, the case is stated to be fixed for prosecution evidence.

In view of the above, the present petition is allowed. The petitioner is ordered to be released on bail subject to his

furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

It is however, made clear that if the petitioner involves himself in any other case, it would be open to the prosecution to seek cancellation of the bail granted to the petitioner.

07.12.2022
ds

(HARNARESH SINGH GILL)
JUDGE

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