

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CRM-M-28139-2022 (O & M)****Date of decision: 11.07.2022**

Rohit

.... Petitioner

V/s

The State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Dhruv Gupta, Advocate, for the petitioner.

Mr. Vikrant Pamboo, DAG, Haryana.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 439 Cr.P.C. is for the grant of the regular bail to the petitioner in a case FIR No.48 dated 20.02.2022 under Section 21 of the NDPS Act, 1985 registered with Police Station Sector 9, Ambala City.

2. The brief facts of the case are that on 20.02.2022, the police party was on patrolling duty and when it reached near the Stadium, Sector 9, Ambala City at about 6.05 p.m., a secret informant met and gave information that certain persons i.e. Rahul alias Lallu son of Shyama, Rohit son of Chandi (the present petitioner) and Simran Kaur alias Doll (since granted bail vide order dated 11.05.2022), daughter of Rajdeep Singh were in the business of selling heroin and collecting money and shall be coming in their Verna car bearing No.HR-26BV-8452, colour black from village Kaunla, Ambala City towards Jalbeda Road, Ambala City.

3. Based on the said information, a *nakabandi* was started and the aforesaid car was stopped. In the said car, two persons and one girl was sitting. On enquiry, the person sitting in the driver seat of the car, disclosed

his named as Rahul @ Lallu son of Shyama, the person sitting behind Rahul

@ Lallu, disclosed his named as Rohit son of Chandi (the present petitioner) and the girl sitting on the left side of Rohit disclosed her name as Simran Kaur @ Doll, daughter of Rajdeep Singh, the present petitioner. Pursuant thereto, a recovery of 300 grams of heroin was effected from Rahul @ Lallu.

4. The learned counsel for the petitioner contends that only Rahul @ Lallu was found in possession of 300 grams of heroin, and therefore, the petitioner could not be said to be in conscious possession of the same. He contends that the co-accused of the petitioner has been granted the concession of bail.

5. The learned counsel for the petitioner relies upon various judgments of this Court passed in the cases of “**(i) Dinesh Singh Dadhwal versus State of Punjab (CRM-M-23217-2012 decided on 15.10.2012), (ii) Buta Singh @ Buti versus State of Punjab (CRM-M-2349-2016 decided on 26.02.2016), (iii) Avtar Singh versus Narcotic Control Bureau Zonal Unit, Chandigarh (CRM-M-10230-2017 decided on 26.04.2017), (iv) Vicky Kaur versus State of Punjab (CRR-1785-2018 decided on 13.08.2018) (v) Daniya versus State of Punjab (CRM-M-11428-2020 decided on 19.05.2020), (vi) Gagandeep Singh @ Gagna versus State of Punjab (CRM-M-43279-2020 decided on 07.04.2021), (vii) Navdeep Kumar versus State of Punjab (CRM-M-3105-2022 decided on 01.02.2022) and (viii) Harjit Singh @ Jeeta versus State of Punjab (CRM-M-5415-2022 decided on 15.02.2022)**” to contend that the recovery from each accused is to be weighed separately and if individual recoveries are effected from each accused, the same is not to be totalled to examine as to whether the recovery is of commercial or non-commercial quantity. Be that as it may, in the present case, the recovery is only from Rahul @ Lallu, the co-accused.

6. The learned counsel for the State, on the other hand, contends that the recovery of a commercial quantity of contraband is effected from the co-accused and as such the petitioner does not deserve the concession of bail. The case of the prosecution is that all the three accused were travelling in the same car and were in the business of dealing with narcotics.

7. I have heard the learned counsel for both the parties.

8. This Court in the judgments passed in the cases of “**(i) Dinesh Singh Dadhwal, (ii) Buta Singh @ Buti, (iii) Avtar Singh, (iv) Vicky Kaur , (v) Daniya, (vi) Gagandeep Singh @ Gagna, (vii) Navdeep Kumar and (viii) Harjit Singh @ Jeeta (supra)** has categorically held that if separate recoveries are effected from each accused, the said recoveries cannot be totalled to examine as to whether the total recovery is commercial or non-commercial.

9. In the present case, there is no recovery effected from the petitioner. It would be a matter of adjudication during trial if the petitioner could be said to be in a conscious possession of the contraband when recovery was effected from the co-accused. The co-accused of the petitioner, namely, Simran Kaur @ Doll, has been granted bail vide order dated 11.05.2022 (Annexure P-3) passed by this Court. Even otherwise, the petitioner is in custody since 20.02.2022, the challan stands filed and as many as 31 prosecution witnesses are to be examined, none of whom, have been examined till date. In the facts and circumstances of the present case, the rigours of Section 37 of the NDPS Act can be relaxed to an extent as no recovery has been effected from the person of the petitioner.

10. Keeping in view the aforesaid facts, the further incarceration of the petitioner is not required. Thus, without commenting upon the merits of

ordered to be released on bail to the satisfaction of the Trial Court/Duty Magistrate concerned.

July 11, 2022
sukhpreet

(JASJIT SINGH BEDI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No