

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CRM-M-31170-2022 (O & M)****Date of decision: 22.11.2022**

Arwinder Singh @ Shanky

.... Petitioner

V/s

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Tejinder Pal Singh, Advocate, for the petitioner.

Mr. Kirat Singh Sidhu, DAG, Punjab.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 439 Cr.P.C. is for the grant of regular bail to the petitioner in case FIR No.57 dated 13.05.2022 under Sections 304/34 IPC and Section 18/21/29 of the NDPS Act, 1985 registered with Police Station City Dhuri, District Sangrur.

2. The brief facts of the case are that an FIR No.57 dated 13.05.2022 under Sections 304, 34 IPC at Police Station City Dhuri was registered against Arwinder Singh @ Shanky son of Ranjit Singh (present petitioner) on the basis of a statement of Gagandeep Singh, who stated that his younger brother-Nirmal Singh was working at Aggarwal Bhullar Medical Store, Dhuri, whose fiancé Sandeep Kaur had opened a clinic in the name and style of Guru Kirpa Clinic, Dhuri. On 12.05.2022 at about 8.40 p.m., when he alongwith his uncle Avtar Singh went to Bhullar Medical Store, Dhuri, to pick up his brother-Nirmal Singh, Arwinder Singh @ Shanky reached there and told them to wait for 10 minutes as he and Nirmal Singh

had to go somewhere for some work. Therefore, they both went away on his motorcycle. When they did not return after 10/15 minutes, he (complainant) called up his brother-Nirmal Singh who stated that it would take another 20/25 minutes more for him to come back. When he again called up on his brother's phone, then Arwinder Singh @ Shanky picked up the phone and asked them to reach the spot as something had happened to Nirmal Singh. Thereafter he (complainant) alongwith his uncle Avtar Singh reached at the spot, where his brother was lying unconscious and Arwinder Singh @ Shanky was standing near him. They took him (Nirmal Singh) to Balian Hospital, Dhuri, where the doctor declared him dead. Arwinder Singh @ Shanky was an alcoholic and a drug addict and had also got his brother hooked on to drugs. Arwinder Singh @ Shanky had administered some poisonous substance to his brother, resulting in his death. On the basis of the said statement, the present FIR under Section 304 IPC was registered.

On 13.05.2022, Gagandeep Singh (complainant) got recorded his supplementary statement wherein he stated that his brother-Nirmal Singh (deceased) and the petitioner were consuming drugs since long and would procure the same from Raju, Karamjit Singh @ Bachhi sons of Boli Ram, Boli Ram, son of Arjan, Sheelo wife of Sem and Shanty son of Sem. On 12.05.2022, they had come to know that his brother-Nirmal Singh and Arwinder Singh @ Shanky had brought *chitta* (drugs) from Shanty son of Sem and Sheelo wife of Sem (mother and son). On this supplementary statement, Raju, Karamjit @ Bachhi sons of Boli Ram, Boli Ram son of Arjan, Sheelo wife of Sem and Shanty son of Sem were nominated as accused under Section 29 of the NDPS Act vide DDR No.44 dated 13.05.2022.

The petitioner was arrested on 13.05.2022. The name of the accused Shanty was verified as Shanty Singh son of Tarsem Singh and was arrested on 13.05.2022 and pursuant to his disclosure statement, he got recovered 04 grams of intoxicating powder from his possession and therefore, an offence under Section 21 of the NDPS Act was added.

Accused-Karamjit Singh @ Bachi was arrested on 17.05.2022 and pursuant to his disclosure statement, 400 grams opium and Rs.10,000/- were recovered from him on 18.05.2022 and offence under Section 18 of the NDPS Act was added. The accused Sheelo @ Sheela Devi, Raju @ Raj Kumar and Boli Ram were granted the concession of interim bail by this Court and pursuant to the same, they all joined investigation.

3. The learned counsel for the petitioner contends that the allegations against the petitioner are based on hearsay evidence and confessions made in police custody by the co-accused. No recovery whatsoever has been effected from him. In fact, as per the supplementary statement of the complainant, the persons who were the alleged suppliers of the contraband to the petitioner and the deceased-Nirmal Singh have been granted the concession of interim anticipatory bail vide order dated 31.05.2022 passed in CRM-M-24514-2022, order dated 02.06.2022 passed in CRM-M-25537-2022 and order dated 14.06.2022 passed in CRM-M-26415-2022 (Annexures P-2 to P-4) respectively and have been subsequently confirmed. The petitioner was in custody since 13.05.2022 and none of the 27 prosecution witnesses had been examined so far. Therefore, the Trial of the present case was not likely to be concluded in the near future. In the two other FIRs, registered against the petitioner, he has been granted the concession of bail as is borne out from the order dated

Sangrur and the order dated 06.05.2022 passed in CHI/28/2022 by the Judicial Magistrate Ist Class, Dhuri. He, thus, contends that the petitioner deserve the concession of bail in the present case as well.

4. The custody certificate of the petitioner dated 16.11.2022 has been filed in the Court today. The same is taken on record. The learned counsel for the State while referring to the reply dated 16.11.2022 contends that the petitioner was, in fact, with the deceased-Nirmal Singh as is borne out from the statement of the complainant which led to the registration of the FIR. He was an alcoholic and a drug addict and had got Nirmal Singh (deceased) hooked on to drugs. He was an accused in two other cases including one under the NDPS Act. Therefore, the prior conduct of the petitioner did not entitle him to the grant of bail in view of the bar under Section 37 of the NDPS Act.

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

6. As per the FIR, the petitioner was found in the company of the deceased-Nirmal Singh and the allegations against him are that he was not only an alcoholic and drug addict but also got the brother of the complainant, namely, Nirmal Singh (deceased) hooked on to drugs. Pursuant to the arrest of the petitioner, however, no recovery was effected from him. Undoubtedly, there is one other FIR under the NDPS Act registered against the petitioner. In FIR No.219 dated 21.08.2019 under Sections 21/61/85 of the NDPS Act, registered at Police Station Sadar Dhuri, 05 grams of heroin was shown to have been recovered from the petitioner. In the said FIR, the petitioner has been granted the concession of bail vide order dated 21.09.2019 passed by the Judge, Special Court, Sangrur. Similarly, in FIR No.158 dated 11.08.2021 under Sections 341, 323, 325,

has been granted the concession of bail vide order dated 06.05.2022 passed by the Judicial Magistrate Ist Class, Dhuri.

A perusal of the State reply would show that the petitioner appears to be a consumer rather than a supplier. The co-accused of the petitioner, namely, Raj Kumar, Boli Ram and Sheelo Devi @ Sheela Devi have been granted the concession of anticipatory bail by this Court vide separate orders dated 07.09.2022 passed in CRM-M-24514-2022, CRM-M-26415-2022 and CRM-M-25537-2022.

As per the case of the prosecution, there are 27 prosecution witnesses in the present case, none of whom had been examined so far. Therefore, the Trial of the case is not likely to be concluded anytime soon. Thus, the further incarceration of the petitioner is not required.

7. In view of the above, but without commenting upon the merits of the case, the present petition is allowed and the petitioner, namely, Arwinder Singh @ Shanky, is ordered to be released on bail to the satisfaction of the Trial Court/Duty Magistrate concerned.

8. The petitioner shall appear before the local police station on the first Monday of every month till the conclusion of the trial and shall furnish an affidavit each time that he is not involved in any other crime/case other than the cases referred to hereinabove.

(JASJIT SINGH BEDI)
JUDGE

November 22, 2022
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No