

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

205

CRM-M-37684-2021

Date of decision: 14.02.2022

BALWINDER SINGH

.....Petitioner

Versus

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE SANT PARKASH

Present : Mr. Vipul Jindal, Advocate
for the petitioner.

Mr. Arun Kaundal, DAG, Punjab
for the respondent-State.

SANT PARKASH, J. (ORAL)

Prayer in this petition filed under Section 439 of the Code of Criminal Procedure, 1973 is for grant of regular bail to the petitioner, in case, FIR No. 19 dated 23.01.2021 registered under Sections 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act') at Police Station Chhehrata, District Amritsar.

As per the prosecution version, on 23.01.2021 the police party on the basis of secret information intercepted the accused-petitioner-Balwinder Singh, who was driving motorcycle along with his co-accused Harchand Singh, who was sitting on the pillion and on search recovery of 255 grams of heroin was made from black colour polythene packet in right pocket of the jacket worn by the petitioner.

The petition has been opposed by learned State Counsel.

However, no reply has been filed on behalf of respondent/State.

I have heard learned Counsel for the parties and gone

through the case file.

Learned Counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case. The recovery effected from the petitioner was marginally high of the commercial quantity. In case marginally more quantities Section 37 of the NDPS Act cannot be taken as an absolute bar and departure can be from the same. Even the weight of the polythene was not separately recorded. In view of the possibility and margin of error alleged recovery from the petitioner is debatable to be falling in the category of commercial quantity or not. The mandatory provisions of the NDPS Act were not complied with. The petitioner is involved in one other case under the NDPS Act in which recovery is 5 grams heroin and 200 intoxicant tablets and the petitioner has already been granted interim bail by the trial Court in the said case vide order dated 01.06.2018 (Annexure P-11). Co-accused Harchand Singh has already been granted bail by this Court vide order dated 22.07.2021. Challan in the present case has already been filed. Trial is likely to take long time. No useful purpose will be served by keeping the petitioner in custody. Therefore, the petitioner may be ordered to be released on regular bail.

On the other hand, learned State Counsel has submitted that the petitioner is accused of having committed serious offences by keeping commercial quantity of contraband in his possession. In view of the nature of accusation and gravity of the offences, the petitioner does not deserve grant of regular bail. Therefore, the petition may be dismissed.

Learned State Counsel has filed Custody Certificate dated 13.02.2022 which is taken on record.

A perusal of the Custody Certificate would reveal that the petitioner has undergone actual sentence of one year and sixteen days. The petitioner is involved in one other case under the NDPS Act and he is on bail in the said case.

In the present case quantity of the contraband allegedly recovered from possession of the petitioner is marginally higher than the commercial quantity of the contraband. It has been pleaded in the petition that actual weight of the polythene bag was not separately recorded thus making it debatable as to whether the quantity was really commercial or not.

Co-ordinate Bench of this Court in its judgment titled as **Jagjit Singh @ Jagga Gill and other Vs. State of Punjab, 2020 (2) RCR (Criminal) 612**, has held that the Bar under Section 37 in case of commercial quantity cannot be termed to be absolute in nature and the departure can be made if the alleged recovery is marginally higher than the commercial quantity.

Having considered the facts and circumstances of the case, recovery of the contraband marginally higher than the commercial quantity, orders passed by Co-ordinate Benches in **CRM-M-44066-2019** titled '**Pritam Kaur @ Bawi Vs. State of Punjab**' decided on **31.01.2020**; **CRM-M-2538-2018** titled '**Shanta Pun @ Bahadur Vs. State of Punjab**' decided on **23.04.2018** and **CRM-M-30672-2019** titled '**Satnam Singh @ Sattu Vs. State of Punjab**' decided on

17.09.2019 for grant of bail in similar circumstances of recovery of 260 grams/258 grams intoxicant powder, the period of custody of the petitioner, challan in the present case already been presented, custodial interrogation of the petitioner not required for effecting any recovery and the fact that the trial is likely to take long time due but without expressing any opinion on the merits of case, the petition is allowed and the petitioner is ordered to be released on regular bail on furnishing of personal and surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

14.02.2022
kavneet singh

(SANT PARKASH)
JUDGE

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