

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

230

CRM-M-34222 of 2022
Date of Decision:09.08.2022

Randeep Kumar @ Toppi

---Petitioner

versus

State of Punjab

---Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: Mr. Vijay Kumar Jindal, Advocate
for the petitioner

Ms. Amarjit Kaur Khurana, DAG, Punjab

VINOD S. BHARDWAJ, J. (ORAL)

The instant petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "CrPC") by the petitioner for seeking concession of regular bail in case bearing FIR No. 246 dated 11.12.2020 under Sections 21(c), 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, Section 25 of the Arms Act, 1959 and Sections 212 and 216 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') registered at Police Station Lohian District Jalandhar (Rural).

Brief facts of the present case are that on 11.12.2020, 02 Kg of heroin was allegedly recovered from co-accused Rakesh Kumar @ Kesha and Jaswinder Singh each along with one pistol each as well as five cartridges each. Thereafter, accused Rakesh Kumar @ Kesha and Jaswinder Singh suffered disclosure statement that they met Palwinder Singh @ Pinda in Kapurthala Jail and after they were released on bail, they used to contact him on Whatsapp No. +447404461027 and +19093309590. At the instance

of Palwinder Singh @ Pinda they have gone to Srinagar to get 04 kg of heroin. They also disclosed that Palwinder Singh @ Pinda is the mastermind of this racket against whom 20-22 cases of murder, snatching, attempt to murder and smuggling of heroin are pending and he has been handling this racket from jail itself. On the basis of such disclosure statement, production warrants of accused Palwinder Singh @ Pinda were obtained and his statement was recorded, in which he corroborated the disclosure statement suffered by Rakesh @ Kesha and Jaswinder Singh. Apart from this, he also disclosed that at his instance 01 kg each of heroin at the rate of Rs.20 lacs per Kg was to be sold to Jaswant Singh @ Jassa, as well as to the representative of Randeep Singh alias Toppi (petitioner herein). Further, 500 gms of 'Heroin' @ Rs.10 lacs was to be sold to Baljeet Singh alias Kala Sarpanch Son of Darshan Singh. He also stated that all these persons have earlier also sold almost 02 kg of 'Heroin' brought by Jaswinder Singh. On the basis of such disclosure statement, petitioner-accused Randeep Singh alias Toppi has been arrayed as an accused.

Learned counsel for the petitioner contends that the petitioner is being falsely implicated in the aforesaid case merely because the petitioner was convicted in FIR No. 221 dated 19.05.2010 under Sections 302 and 307 IPC registered at Police Station Civil Lines, Amritsar in which a police official had died. He contends that the petitioner has been in custody in the said case and his sentence was suspended by this Court vide order dated 02.06.2022. Learned counsel further contends that the instant case has been falsely registered against the petitioner only with an intent to keep him

confined in jail on one pretext or the other. Learned counsel vehemently argues that as per the allegations culled out from the FIR, the co-accused Rakesh Kumar @ Kesha and Jaswinder Singh were arrested with 4 kgs of heroin i.e. 2 kgs each. The said co-accused person namely Jaswinder Singh was also carrying a country made pistol. The name of the petitioner figured in the disclosure statement of co-accused person namely Palwinder Singh @ Pinda. Learned counsel contends that the said co-accused person namely Palwinder Singh @ Pinda had stated in his disclosure statement that he was to purchase 01 kg of heroin from co-accused persons namely Rakesh Kumar @ Kesha and Jaswinder Singh @ Pinda and that after purchase of said heroin, the same was to be sold over to other persons to be nominated by the petitioner. However, no narcotic/contraband was recovered from the petitioner and moreover, no drug money was recovered from him on the basis whereof the said disclosure could be co-related to the petitioner. He contends that as there is no recovery, the disclosure statement has no evidentiary value and has to be discarded. He further contends that a similarly placed co-accused person namely Jaswant Singh @ Jassa has already been granted the concession of bail vide order dated 27.05.2022 passed in CRM-M- 22627 of 2022. The only area of distinction is, however, the period of custody being referred to by the State, inasmuch as the said co-accused persons had undergone 01 years, 03 months and 18 days of actual custody whereas the present petitioner is stated to have undergone an actual custody of 03 months and 11 days. Learned counsel contends that even the said submission is fallacious inasmuch as the petitioner is already convicted for life imprisonment in FIR No. 221 dated 19.05.2010 and that by operation of Section 427 (2) of the CrPC, even if the

petitioner is now convicted for the aforesaid offence, his entire period of under trial from 20.12.2020 has to run concurrently and as such, if the custody period of the petitioner is to be calculated correctly as per the statutory provisions, he has already undergone a period of nearly 01 year and 10 months.

Learned State counsel, however, submits that the petitioner has a criminal history and is involved in a large number of other cases committed under the Acts involved in the instant case. However, she does not controvert the fact that the role of the petitioner is at par with the said co-accused person namely Jaswant Singh @ Jassa to whom the concession of regular bail has already been extended. In so far as the involvement of the petitioner in other cases is concerned, the Hon'ble Supreme Court in **Prabhakar Tiwari vs. State of UP 2020 (1) RCR (Criminal) 831** as well as in the matter of **Mohd. Azam Khan vs State of U.P. decided on 19.05.2022 in Writ Petition (Criminal) No. 39 of 2022** have held that mere involvement of an accused in other criminal cases cannot be a ground unto itself for denial of bail and for continued incarceration. The merits of the case where an accused has applied for bail were also required to be examined and the discretion for granting bail is to be exercised taking into consideration the merits of the case as well.

I have heard learned counsel appearing on behalf of the respective parties and have gone through the record with their assistance.

Taking into consideration the circumstances noticed above, the fact that the co-accused of the petitioner who has been similarly situated has already been granted the concession of bail and that the significance of the disclosure has to be determined at the stage of trial especially when the

same has not led to any recovery, the stage of trial being still the same i.e. only five witnesses having been examined and that the number of witnesses to be examined have increased on account of filing of supplementary challan, I find merit that the case of the petitioner cannot be distinguished so far as his co-accused who has already been granted bail is concerned. Accordingly, the petition is allowed and the petitioner is ordered to be released on bail on his furnishing requisite bail bond/surety bond to the satisfaction of the Trial Court/Duty Magistrate, concerned.

It is made clear that the petitioner shall not extend any threat and shall not influence any prosecution witnesses in any manner directly or indirectly.

The observation made hereinabove shall not be construed as an expression on the merits of the case and the trial Court shall decide the case on the basis of available material.

The petition is allowed.

(VINOD S. BHARDWAJ)
JUDGE

09.08.2022

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No