

**In the High Court for the States of Punjab and Haryana
At Chandigarh**

CRM-M-39821-2021 (O&M)

Date of Decision:-1.12.2022

Mangjeet Singh

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Karan Singh Khehar, Advocate with
Mr. Tarun, Advocate for the petitioner.

Mr. Siddharth Attri, AAG, Punjab,
assisted by ASI Satnam Singh.

GURVINDER SINGH GILL, J. (Oral)

1. The petitioner seeks grant of regular bail in respect of a case registered vide FIR No.19, dated 20.12.2020, Police Station SSOC, Amritsar, under Section 21, 25 and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985.
2. The FIR in question was lodged on the basis of a secret information to the effect that Jaswinder Singh @ Kala, Harwinder Singh, Baldev Singh, Mangjit Singh and Gurpreet Singh @ Billa have association with a famous smuggler by the name of Rana and other smugglers based in Pakistan and that they received huge quantity of heroin from across the border. The information was further to the effect that on 20.12.2020, they were bringing huge quantity of heroin through the border. It is the case of prosecution that

in pursuance to said information, the police apprehended Jaswinder Singh and Mangjit Singh on 22.12.2020 along with a tractor from which 2 Kgs. of heroin was recovered.

3. The learned counsel for the petitioner has submitted that he is an agriculturist and has falsely been implicated in the present case on account of party faction in the village. It has been submitted that in any case the petitioner cannot be attributed conscious possession of the recovered contraband inasmuch as the same was recovered from underneath the driver seat of the tractor and the tractor was being driven by co-accused Jaswinder Singh whereas the petitioner was merely sitting on the mud-guard of the tractor. The learned counsel has further submitted that since the petitioner was arrested two days after lodging of the FIR, it is apparently a case where the recovery has been planted upon the petitioner and the co-accused. The learned counsel has further submitted that a perusal of various documents prepared at the spot also point out that the same have been prepared and fabricated later inasmuch as while the body-writing of the said memos is printed with the help of computer printer, the particulars of FIR are mentioned in hand. The learned counsel has pressed into service some orders passed by co-ordinate Benches of this Court and Hon'ble Supreme Court of India wherein bail has been granted even in case of recovery of 'commercial quantity'.
4. On the other hand, the learned State counsel has submitted that it is a case where the police had prior secret information against the petitioner by name which is duly recorded in the FIR and since the petitioner alongwith co-accused Jaswinder Singh was caught red-handed at the spot, while sitting on a tractor and two kilograms of 'heroin' was recovered from the tractor which

had been kept concealed beneath the tractor seat, the complicity of the petitioner is clearly evident and the mere fact that he was sitting on the mud-guard of the tractor and not on the driver seat would not be of any consequence. The learned State counsel has informed that the petitioner, as on date, has been behind bars since the last about 1 year 11 months and 11 days.

5. This Court has considered rival submissions addressed before this Court.
6. It is not in dispute that the name of the petitioner is reflected in the FIR lodged on the basis of secret information received by the police. The petitioner alongwith co-accused Jaswinder Singh was caught at the spot while both of them were going on a tractor and huge quantity of contraband i.e. two kilograms of 'heroin' was recovered which had been kept concealed underneath the driver's seat of the tractor. In such circumstances, the petitioner can safely be attributed conscious possession. The factum of handwritten number of FIR on computer printed documents cannot be construed to mean that all documents are fabricated.
7. The recovery, being 'commercial quantity', the fetters imposed by Section 37 of the NDPS Act would be attracted in the matter of grant of bail. There is nothing on record to suggest that the petitioner has been falsely implicated. Hon'ble Apex Court in a judgment i.e. 2020(1) RCR(Criminal) 818 State of Kerala vs. Rajesh Kumar has reiterated the legal position as regards the limitations imposed by Section 37 of the Act and has further held that a liberal approach in matters of bail in offences under the NDPS Act is uncalled for.
8. Hon'ble Supreme Court in a very recent judgment Narcotics Control Bureau vs. Mohit Aggarwal, 2022(3) RCR(Criminal) 985, while deciding an appeal

filed by Narcotics Control Bureau challenging grant of bail to an accused by the High Court, cancelled the bail while reiterating the view that provisions of Section 37 of the Act have to be strictly complied with and that mere length of custody cannot be a consideration for grant of bail. Paras 14 and 18 of the said judgment read as follows :-

“14. To sum up, the expression “reasonable grounds” used in clause (b) of Sub-Section (1) of Section 37 would mean credible, plausible and grounds for the Court to believe that the accused person is not guilty of the alleged offence. For arriving at any such conclusion, such facts and circumstances must exist in a case that can persuade the Court to believe that the accused person would not have committed such an offence. Dove-tailed with the aforesaid satisfaction is an additional consideration that the accused person is unlikely to commit any offence while on bail.

15. xxx xxx xxx

16. xxx xxx xxx

17. xxx xxx xxx

18. In our opinion the narrow parameters of bail available under Section 37 of the Act, have not been satisfied in the facts of the instant case. At this stage, it is not safe to conclude that the respondent has successfully demonstrated that there are reasonable grounds to believe that he is not guilty of the offence alleged against him, for him to have been admitted to bail. The length of the period of his custody or the fact that the charge-sheet has been filed and the trial has commenced are by themselves not considerations that can be treated as persuasive grounds for granting relief to the respondent under Section 37 of the NDPS Act.”

9. There is nothing on record at this stage from which it could be inferred that the petitioner is not guilty of the offence in question or that in case released on bail, he is not likely to indulge in such offences again. Finding no merit in the petition, the same is hereby dismissed.

1.12.2022

kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned
Whether Reportable

Yes / No
Yes / No