

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

214+106

CRA-D-789-2022(O&M)

Date of Decision : December 07, 2022

AVTAR SINGH @ AVTAR SINGH MARATTA

.....Petitioner

VERSUS

STATE OF PUNJAB

.....Respondent

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present : Mr. Ankur Mittal, Advocate with
Mr. Lalit Singla, Advocate
for the applicant-appellant.

Mr. Arun Gupta, AAG, Punjab.

SURESHWAR THAKUR, J. (Oral)

1. The present appellant alongwith other co-accused has been arrayed as an accused in FIR No. 92 dated 16.5.2022 registered at Police Station Special Task Force, District SAS Nagar, (Mohali). In the FIR (Supra), offences constituted under Sections 21, 23, 29, 61-85 of the Narcotic Drugs and Psychotropic Substances Act, 1985, Sections 25-54-59 of the Arms Act, 1959, Sections 4 and 5 of the Explosive Substance Act, 1908, and, under Sections 13, 16, 18, 20 of UAPA Act, Sections 7, 13(1)(A)(2) of P.C.Act, become embodied.

2. In pursuance to the above, it is alleged against the present appellant that he had ensured recovery from one Guravtar Singh @ Sonu of heroin weighing commercial quantity. The disclosure statement as made by the present appellant is placed before this Court today, by the Investigating Officer concerned, who is present along with the relevant

records. At this stage, it is not fit and appropriate to assess the probative rigor of above made disclosure statement, as the above factum has to be determined, during the trial, as may be made against the accused, in respect of the offences (Supra). Primarily the recovery, as made in pursuance thereto from the site/locations as mentioned by the present appellant, does make the recovery to fall within the ambit of commercial quantity of heroin.

3. Be that as it may, a perusal of the disclosure statement, and, of the apposite reply furnished by the present appellant, discloses that the present appellant was never a member of any banned or terrorist organization, nor there is any echoing made in the reply/affidavit, as furnished by the State, to the instant petition, that he had any link or alignment with any member of any banned or terrorist organization. Therefore, prima facie, at this stage the inclusion in the FIR, of offences constituted under the UAPA Act, do not appear to be well made out from, the reply furnished to the instant application, by the respondent. Moreover, the fact that the report under Section 173 Cr.P.C., as instituted before the trial Court concerned, contains therein offences constituted under the NDPS Act, whereas, offences constituted under the UAPA Act, do not become incorporated therein. Thus, the institution of the bail application at the instance of the present appellant before the learned Additional Sessions Judge, concerned, for bail being granted to him for alleged breach of any provisions of UAPA Act, rather was a mis-constituted remedy.

4. However, in view of the above, the petition is disposed of

with a direction to the present appellant to access the jurisdictionally competent Court with a petition under Section 439 Cr.P.C.

5. In view of the above observations, the present petition is disposed of.

6. All the pending applications stand disposed of.

7. The application bearing CRM-45764-2022 for interim release of the appellant to enable him to attend the marriage of his son, is also disposed of, but, with a direction to the present appellant to file the same before the learned Jurisdictionally competent Court, where, an application under Section 439 Cr.P.C., becomes instituted. The learned Jurisdictionally competent Court shall, but in accordance with law make prompt orders thereon.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

December 07, 2022
ajay-1/devinder

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No