

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

CRM-M-46275-2021

Date of Decision: 13.01.2022

Joginder Singh alias Foji

....Petitioner

Vs.

State of Haryana

....Respondent

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

Present: Mr.Vikas Bishnoi Godara, Advocate
for the petitioner.

Mr. Amnol Malik, DAG, Haryana.

AMOL RATTAN SINGH, J. (Oral)

Case heard *via* video conference.

On 02.11.2021, the following order had been passed by this

court:-

“Case heard by video conferencing.

By this petition, the petitioner seeks the concession of 'pre-arrest bail' upon FIR No. 53 having been registered at Police Station Ding, District Sirsa, on 12.04.2021, alleging therein the commission of offence punishable under the provisions of Section 21-B of the NDPS Act.

Learned counsel for the petitioner points out that even the total quantity of heroin as is alleged to have been recovered from his co-accused, i.e. Ravi and Sukhdev @ Sukha, being well below the commercial quantity and the petitioner's name having disclosed in an alleged statement made in police custody, he deserves to be admitted to bail.

Notice of motion.

Mr.Munish Sharma, AAG Haryana, accepts notice at the asking of the Court.

A copy of the petition be supplied to him.

Learned State counsel submits that one more case is registered against the petitioner under the provisions of NDPS Act, 1985 and therefore he does not deserve to be admitted to bail.

Adjourned to 16.12.2021.

Keeping in view the fact that the petitioner's name has been disclosed in an alleged statement made in police custody, and the quantity of heroin stated to have been recovered from his co-accused is well below the commercial quantity(40 gms.), without making any comment on the merits of the case, the petitioner is directed to join the investigation. Upon the petitioner joining investigation within one week, in case he is sought to be arrested, he would be released on bail, on his furnishing adequate bail and surety bonds to the satisfaction of the arresting officer/Ilaqa Magistrate.

He shall also comply with the conditions stipulated in Section 438(2) of the Cr.P.C.

If the arresting officer does not join the petitioner in investigation, he would appear before the learned Ilaqa Magistrate immediately, who would then summon the arresting officer and direct him to join him in investigation, in terms of the order of this court.”

Though as per the reply filed on behalf of the respondent State by way of an affidavit of the DSP, Headquarters, Sirsa, dated 11.12.2021, it is stated that the petition may be dismissed and that the custodial interrogation of the petitioner is required as he is the person who sold the recovered heroin to his co-accused, Ravi and Sukhdev Singh alias Sukha, learned counsel for the petitioner reiterates what he had stated on 02.11.2021, with learned State counsel submitting that today at least, on his instructions from SI Sandeep Kumar, the petitioners' custodial interrogation is not required at this stage.

That being so and further obviously keeping in view the fact that the bar under Section 37 of the NDPS Act, 1985, may not be attracted in view of the fact that admittedly the quantity of heroin stated to have been recovered from the petitioner was 20 grams, though with a total of 40 grams having been recovered from him and his co-accused together (20 grams each), and with commercial quantity being above 250 grams even as per learned State counsel, without making any comment on the actual merits of the case, the petition is allowed, with the order dated 02.11.2021 made absolute, on the same terms and conditions.

January 13, 2022

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Whether speaking/reasoned : YES
Whether Reportable : NO

**(AMOL RATTAN SINGH)
JUDGE**