

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

231

CRM-M-46476-2022

Date of Decision: 17.11.2022

Lakhwinder Singh @ Lucky

....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Baljit Singh, Advocate, for the petitioner.

Mr. Amit Rana, Sr. DAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

The present petition has been filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No. 223 dated 15.12.2021, under Sections 21-C, 25 and 29 of NDPS Act, registered at Police Station STF, SAS Nagar, Mohali.

It has been submitted by the learned counsel for the petitioner that the petitioner is in custody for 11 months and 3 days and the investigation of the case has already been completed and thereafter, the challan has been presented. He submitted that the petitioner is not a habitual offender and even as per the FIR, a secret information was received with regard to the other co-accused namely Gurmeet Singh and not with regard to the present petitioner and as per the allegations there were three persons sitting in a car including the petitioner who was allegedly sitting on the conductor seat. He further submitted that the recovery was made not from

the petitioner but from the car. He further submitted that the petitioner is neither the owner nor the driver of the car and therefore, the bar contained under Section 37 of the NDPS Act will not apply in the present case. He further submitted that the provisions of Section 42 and 50 of the NDPS Act were not complied with in the present case.

On the other hand, the learned State counsel has submitted that so far as the custody period of the petitioner is concerned, the same is correct but the prayer of the petitioner for grant of regular bail is hit by the bar contained under Section 37 of the NDPS Act as there was a recovery of 306 grams of heroin from the car in which the petitioner and other co-accused were travelling and there was a concrete information with the police that a car was coming from a particular direction in which the present petitioner was sitting alongwith the other persons. He submitted that the petitioner and the other co-accused were travelling in a car when the naka was laid down and thereafter, the proper procedure under Section 50 of the NDPS Act was followed and an offer was made under Section 50 of the NDPS Act and thereafter a Gazetted Officer was called and in the presence of the Gazetted Officer the search was done and therefore, the entire procedure under Section 50 of the NDPS Act was complied with and there was no violation in that regard. He further submitted that so far as the submissions made by the learned counsel for the petitioner that there was a violation of Section 42 of the NDPS Act is concerned, the same was without any basis in view of the fact that after receiving of the secret information the same was reduced in the form of writing and even otherwise also the provisions of Section 42 of the NDPS Act will not apply in the present case in view of the judgment of a Coordinate Bench of this Court in the case of Mandeep Kaur versus

State of Punjab (CRM-M-27760 of 2021) wherein it was held that when the car is in transit and Section 42 of the NDPS Act will not apply. He has submitted that menace of Heroin is increasing and in order to check the menace, the stringent provision under Section 37 of the NDPS Act has been made by the Parliament of India. He has submitted that in view of the aforesaid circumstances, the petitioner is not entitled for the grant of regular bail.

I have heard the learned counsel for the parties.

The petitioner is in custody for about 11 months. In the present case the police has received a secret informaiton with regard to the fact that one of the co-accused namely Gurmeet Singh was coming alongwith some other persons in a car and on a specific information with regard to the identity of the car also a Naka was laid and thereafter the search was conducted in the presence of a Gazetted Officer. There had been a recovery of 306 grams of Heroin which falls in the category of commercial quantity under the NDPS Act. So far as the violation of Sections 42 and 50 of the NDPS Act is concerned, it has been submitted by the learned State counsel that proper offer was given under Section 50 of the NDPS Act and the provision of Section 42 of NDPS Act will not apply since the car was in transit in view of the judgment of **Mandeep Kaur** (supra). The learned counsel for the petitioner has not been able to substantiate and to make out any ground as to how the provisions of Section 42 of the NDPS Act have been violated in the present case. Apart from the above, the learned counsel for the petitioner has not been able to make out any ground for making a departure from the bar contained under Section 37 of the NDPS Act since the confiscated quantity falls in the category of commercial quantity under

the NDPS Act.

In view of the aforesaid facts and circumstances, this Court does not deem it fit and proper to grant regular bail to the petitioner.

Consequently, the present petition is dismissed.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant for the purpose of deciding the present petition only.

17.11.2022
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(JASGURPREET SINGH PURI)
JUDGE

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