

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

CRM-M-54377-2021

DECIDED ON: 1st APRIL, 2022

HARBHINDER SINGH @ BHINDA

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Pardeep Singh Mirpur, Advocate for
for the petitioner.

Ms. Monika Jalota, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

The instant petition under Section 438 of the Code of Criminal Procedure 1973 is filed seeking pre-arrest bail in FIR No.0198, dated 25th November, 2021, under Section 15 (C) of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act') (Sections 25 and 29 of the Act were added later on), registered at Police Station Sadar Bathinda, District Bathinda.

Preciously it was during the patrolling and checking of suspicious persons by the Anti Narcotic Cell, Bathinda, a police party while moving from Ring Road Bye-pass towards Malout road intercepted a while coloured Traula Ghora 22 Tyres bearing registration No. PB-19-H-7297. A red coloured trolley was attached with it. Two persons were seen sorting out the black coloured plastic bags, who tried to ran away in the dark but apprehended by the police party. They disclosed their names as

Birbal Singh and Nirmal Singh @ Nimma. Recovery of 153 Kgs of poppy

husk was made from the attached trolley and the present FIR was got registered.

Learned counsel for the petitioner submits that the petitioner was nominated as an accused on the basis of attorney holder of the vehicle from which the contraband was allegedly recovered. Neither the petitioner was arrested from the spot nor any recovery had been effected from his possession and, therefore, the petitioner is not connected with the alleged offence/contraband in any manner whatsoever.

On the other hand learned State counsel contends that the vehicle from which the contraband was recovered, was owned by the petitioner and he was nominated as an accused vide Rapat No. 30, dated 26th November, 2021, thereafter, offences under Sections 25 and 29 of the Act have been added. The recovery is of commercial quantity and refers to the restrictions imposed by Section 37 of the Act, which reads as under:

“ Offence to be cognizable and non-bailable.-

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)-

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless-

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to

commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail].

In case of commercial quantity two essential ingredients under Section 37(1)(ii) are required to be fulfilled. Firstly, there should be a reasonable ground for Court to believe that the accused is not guilty of the offence and secondly that he is not likely to commit any offence while on bail. Section 37(2) of the Act provides that the limitations imposed therein for grant of bail are in addition to the restrictions under the Code of Criminal Procedure.

Learned counsel for the petitioner has not been able to point out any material/evidence to satisfy this Court so as to conclude that the petitioner is not involved in the offence. The mere fact that petitioner was not in physical possession of contraband would not be enough to conclude that petitioner is not guilty. As per the investigation the petitioner is the owner of the traula from which the contraband was recovered. He has also got released the vehicle involved in the offence on Superdari from the trial Court vide order dated 13th December, 2021.

In such a situation, it cannot be said at this stage that petitioner has been falsely implicated. Custodial interrogation of the petitioner is, thus, necessary in the given circumstances which would be helpful for the investigating agency to unearth the ramifications involved in this case.

Further this Court is of the considered view that in the absence of custodial interrogation, the investigation of this case is likely to be

stalled.

In view of the above discussion, the present petition is, therefore, dismissed.

1st APRIL, 2022
sham

(SANDEEP MOUDGIL)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>