

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-53721-2022

Date of decision : 29.11.2022

Shinda

..... Petitioner

versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :-Mr. Prateek Pandit, Advocate
for the petitioner.

Mr. Madhur Sharma, AAG, Punjab.

PANKAJ JAIN, J. (ORAL)

Present petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case bearing FIR No.140 dated 20.08.2022, registered for offences punishable under Sections 21(b) and 29 of the NDPS Act (for short the 'Act'), at Police Station Kartarpur, District Jalandhar.

2. As per the prosecution version, on receipt of definite information against three persons including the petitioner, nakabandi was effected and ruqa was sent for registration of case. On the naka, all the three suspects including the petitioner were apprehended travelling on a motorcycle. During their search, heroin weighing 125 gms alongwith money amounting to Rs.5 lakhs in cash was recovered from the person of Kashmir Singh, 10 gms of heroin was recovered from the person of Sukhpal Singh and likewise 15 gms of heroin was recovered from the petitioner. During further investigation, Kashmir Singh

suffered disclosure which led to further recovery of drug money of Rs.73,70,000/- from his house.

3. Counsel for the petitioner has vehemently argued that in fact it is a case of false implication as even prior to registration of the FIR, the police was aware of the nature of the contraband and quantity due to which FIR was registered for offences punishable under Sections 21(b) and 29 of the Act. He further relies upon the judgment of Apex Court in ***Amar Singh Ramjibhai Barot vs. State of Gujarat, 2005(7) SCC 550*** to contend that once the case of prosecution is that separate recoveries were effected, the same cannot be clubbed together. He submits that even if whole of the contraband recovered from the three is taken together, the same would be still less than the commercial quantity as notified under the Act and thus rigorous of Section 37 of the Act will not be applicable.

4. Per contra, Mr. Sharma has emphatically opposed the prayer made by the petitioner to submit that the petitioner is a habitual offender and has as many as 12 more FIRs pending against him including FIR No.173 dated 13.09.2017 registered for offences punishable under Sections 15/21/29/61 of the Act.

5. Faced with the situation, Mr. Pandit relies upon order dated 21.12.2017 passed by a Coordinate Bench of this Court in ***Shinda Singh vs. State of Punjab*** to submit that in fact in the said case, there was no recovery made qua the petitioner and he was nominated merely on the basis of disclosure statement made by one of the co-accused and was granted indulgence by this Court by advancing concession of pre-arrest bail.

6. I have heard counsel for the parties and have gone through the records of the case.

7. Petitioner is in custody since 20.08.2022. Whether the contraband recovered from the accused is taken together or separately, admittedly the same would not meet the threshold of commercial quantity as notified and thus rigors of Section 37 of the Act will not be attracted. Admittedly, the investigation stands completed and report under Section 173 Cr.P.C. has been filed. So far as the allegations w.r.t. the material recovery and the drug money is concerned, the same are qua Kashmir Singh and not the petitioner.

8. Without commenting on the merits of the case and keeping in view the incarceration suffered by the petitioner, the present petition is allowed. The petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the Ld. Trial Court/Duty Magistrate, concerned.

9. Needless to say nothing recorded herein shall be construed to be an expression of an opinion on the merits of the case.

(PANKAJ JAIN)
JUDGE

29.11.2022
Dinesh

Whether speaking/reasoned	Yes
Whether Reportable :	No