

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M-5345-2023
Date of decision: 01.05.2023

CHAMKAUR SINGH @ CHAMKU

.....Petitioner

VERSUS

STATE OF PUNJAB

.....Respondent

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present:- Mr. D.S. Pheruman, Advocate
for the petitioner.

Ms. Niharika Sharma, AAG, Punjab.

VINOD S. BHARDWAJ, J. (Oral)

This is the third petition filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail in case bearing FIR No. 94 dated 20.06.2021 registered under Section 21 of the Narcotics Drugs & Psychotropic Substances Act, 1985 at Police Station City Patti, District Tarn Taran, Punjab.

2. As per the case of the prosecution, the police party was on patrolling duty in search of bad elements when they noticed one person coming from front holding something in a polythene bag. On seeing the police party, he panicked and tried to escape by walking away fastly. The person was apprehended with the help of co-officials whereupon he disclosed his name as Chamkaur Singh alias Chamku (the petitioner herein).

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Expressing apprehension that the petitioner was carrying intoxicating substance, he was given an offer to be searched by a Magistrate or a Gazetted Officer whereupon he exercise the option of being searched by Gazetted Officer. The consent memo of the petitioner was recorded and the Deputy Superintendent of Police, Sub Division Patti was called upon to reach at the spot. He reached the spot & introduced himself. After disclosing his identity to the petitioner and recording his consent, the checking was undertaken. Efforts are stated to have been made to join independent witnesses, however, they expressed their inability to associate. The polythene bag was then taken from the hands of the petitioner and the same was opened. It was found containing heroin weighing about 270 grams. The same was duly sealed in a parcel and separate samples were also drawn. The samples as well as the remaining intoxicants were then taken in police custody. The FIR in question was thereupon registered against the petitioner. The bail petitions earlier filed were withdrawn.

3. It has been averred in the present petition that the petitioner is not involved in any other case nor any case is pending against him in any Court of competent jurisdiction. It is further averred that he is not a proclaimed offender. However, a custody certificate was produced by the Police wherein it was pointed out that on 07.02.2023 that as many as 07 other cases had been registered against the petitioner of which 06 pertains to the NDPS Act.

4. Counsel for the petitioner prayed for some time to verify the same. The hearing in the case was accordingly deferred. A short reply by way of affidavit of Satnam Singh, PPS, Deputy Superintendent of Police,

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Sub Division Patti, District Tarn Taran was also filed thereafter, reiterating the assertion regarding the petitioner being a habitual offender. The details of the cases registered against the petitioner are extracted as under:

Sr. No.	FIR No.	Under Section	Police Station	Stage
1	FIR No. 78 dated 29.05.2019	21/61/85 of the NDPS Act.	City Patti	Under Trial
2	FIR No. 120 dated 29.07.2019	21/61/85 of the NDPS Act.	City Patti	Under Trial
3	FIR No. 28 dated 26.02.2021	411/414 of IPC & 15/16/21/29/22 of the NDPS Act & 25 of the Arms Act.	City Patti	Under Trial
4	FIR No. 152 dated 24.07.2018	22/61/85 of the NDPS Act.	City Patti	Under Trial
5	FIR No. 28 dated 04.03.2017	160 of IPC	City Patti	Under Trial
6	FIR No. 77 dated 17.03.2022	18/22/61/85 of the NDPS Act & 52-A of the Prison Act	Goindwal Sahib	Under Trial
7	FIR No. 94 dated 20.06.2021	21 of the NDPS Act.	City Patti	Under Trial

5. Counsel for the petitioner contends that the petitioner has been in custody for a period of 01 years and 09 months in the present case and that he is entitled to the concession of the bail. He further contends that the evidence in the case has not yet commenced and the conclusion of the trial is likely to take a long time.

6. Per contra, learned State counsel contends that the antecedents of the petitioner do not inspire any confidence. Commercial quantity of heroin has been recovered from the conscious possession of the petitioner.

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She contends that the FSL report pertaining to the contraband had already been received and the salt in the parcel was found to be having ingredients of "Diacetylmorphine=40.15%. The final report under Section 173 (2) of the Cr.P.C. has already been filed and that the case was earlier listed for framing of charge on 24.03.2023. She submits that the bar of Section 37 of the NDPS Act would be applicable against the petitioner considering his involvement in a large number of cases. She also contends that notwithstanding such large number of cases registered against the petitioner, he has deliberately made a mis-declaration in Para No. 15 of the present petition wherein it is averred that the petitioner is neither involved in NDPS nor in any other case and that no cases are pending against him in any Court of competent jurisdiction. The aforesaid declaration being false, the petitioner does not deserve any concession from this Court.

7. I have heard learned counsel appearing on behalf of the respective parties.

8. Taking into consideration the undisputed claim of the respondent-State that as many as 07 different cases including 06 under the NDPS Act have already been registered against the petitioner and further being alleged that commercial quantity of contraband has been recovered from his conscious possession. The claim of the parties is not being gone into or commented upon at this stage lest it may prejudice the rights of the respective parties. Not only has the petitioner made a mis-declaration in the present petition about his criminal antecedents but commercial quantity has also been recovered from him. Section 37 of the NDPS Act would be prima facie attracted in the present case. The present petition is accordingly

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dismissed. However, taking into consideration, the totality of circumstances as also the period of custody already undergone by the petitioner, the respondent prosecution is directed to conclude the prosecution evidence within a period of 06 months from the date next fixed for recording of prosecution evidence.

(VINOD S. BHARDWAJ)
JUDGE

MAY 01, 2023
Vishal Sharma

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