

217 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-4700 of 2023(O&M)

Date of Decision: 03.02.2023

Joban Singh @ Billa

...Petitioner

Versus

State of Punjab

...Respondent

CORAM :HON'BLE MR. JUSTICE KARAMJIT SINGH

**Present:- Mr. A.S. Walia, Advocate
For the petitioner.**

Mr. M.S. Nagra, AAG Punjab.

KARAMJIT SINGH, J.

The present petition has been filed by the petitioner under Section 439 Cr.P.C. seeking regular bail in case having FIR No. 100 dated 12.07.2022, registered under Sections 21, 22 and 29 of Narcotic Drugs and Psychotropic Substances Act (No.61) of 1985, at Police Station Dhanaula, District Barnala.

The allegations in nutshell are that on 12.07.2022 the police party headed by SI Kuldip Singh received a secret information that the petitioner Joban Singh, Karamjeet Singh @ Vicky and Sukhdeep Singh @ Chiria who are dealing in intoxicant tablets and heroin are roaming in the area of Grain Market, Dhanola and are possessing contraband. Then the said police party raided the disclosed place and all three were apprehended on the basis of suspicion and at that time Karamjeet Singh was holding one transparent polythene bag while Sukhdeep Singh was searching something from the said bag and on checking the said polythene bag was found to be

containing 800 loose intoxicant tablets. At that time, petitioner was also found carrying one polythene bag having 15 grams of heroin in it. All three were arrested at the spot. The samples were separated from the aforesaid recovered articles. As per the report of FSL aforesaid 800 tablets were found to be that of tramadol hydrochloride while the contents of the polythene bag carried by the petitioner were found to be containing diacetylmorphine(heroin).

The counsel for the petitioner submits that the petitioner is falsely implicated in the present case and even as per the prosecution version only 15 grams of heroin was recovered from his possession which comes under non commercial quantity and thus is not covered under the rigors of Section 37 of the Act. The counsel for the petitioner further submits that the petitioner is in custody for the last more than 06 months and is having no criminal history and the investigation has already been concluded by the police. So prayer is made that the petitioner be released on regular bail.

The present petition is resisted by the State counsel who submits that at the time of the recovery all three accused were sitting together and 15 grams of heroin was recovered from the polythene bag held by the petitioner while 800 tablets of tramadol hydrochloride were recovered from possession of co-accused Karamjeet Singh and Sukhdeep Singh and the said tablets comes under commercial quantity and thus attracts provision of Section 37 of the Act and accordingly the petitioner is not entitled to grant of regular bail at this stage when the trial has commenced.

I have considered the submissions made by counsel for the parties.

Even if all the three accused were sitting together at the time of recovery, still it is a debatable issue, as to whether the recovery of 800 tablets of tramadol hydrochloride effected from co-accused Karamjeet Singh and Sukhdeep Singh, is also to be considered from the 'conscious possession' of the present petitioner, especially when no offer was given to the petitioner under Section 50 of the Act while such offer was given to co-accused Karamjeet Singh and Sukhdeep Singh before effecting the search of the polythene bag held by them.

As per prosecution version, only 15 grams of heroin is recovered from the polythene bag held by the petitioner and the same comes under intermediate quantity and thus is not covered under the embargo provided in Section 37 of the Act.

Further, the petitioner is having no criminal history and is in custody for the last more than 06 months and after completion of investigation the police has presented the challan and now the trial has commenced but till date no prosecution witness is examined.

In the light of the above, this Court is of the view that no purpose is going to be served by prolonging the judicial custody of the petitioner for indefinite period. Thus, without commenting on the merits of the case, the present petition is allowed and the petitioner is ordered to be released on bail subject to his furnishing bail bonds/surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

(KARAMJIT SINGH)
JUDGE

03.02.2023

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No