

CRM-M-11154-2023

Date of Decision: 13.03.2023

VINEET KUMAR

... PETITIONER

V/S

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. Rahul Sharma, Advocate for the petitioner.
Mr. M.S.Nagra, AAG Punjab.

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VIVEK PURI, J. (ORAL)

Petitioner is seeking regular bail in case bearing FIR No. 303 dated 26.11.2022 under Section 21 of Narcotic Drugs and Psychotropic Substances Act registered at Police Station Special Task Force, Phase IV, District SAS Nagar (Mohali).

Briefly, as per the allegations of the prosecution, the petitioner along with co-accused Gurpreet Singh was travelling on an activa. From the glove box of the scooter, 2 Kg 400 gms of heroin was recovered. From the personal search of the petitioner, 15 gm of heroin was recovered.

Custody certificate has been taken on record.

Learned counsel for the petitioner contends that the recovery memo pertaining to the recovery of 2 kg 400 gms of heroin has been prepared only with regard to Gurpreet Singh, co-accused and recovery attributed to the petitioner is only 15 gms of heroin which falls in the category of less than commercial quantity.

Larned State counsel has opposed the bail application on the score that the petitioner along with the co-accused were travelling on the scooter and the entire recovery of 2 Kg 400 gms of heroin has to be considered to have been effected from the joint conscious possession of both

the petitioner and the co-accused.

Although, the recovery memo has been prepared in the name of Gurpreet Singh only with regard to recovery of 2 Kg 400 gms of heroin but significantly, the contraband has not been recovered from the person of the co-accused. The recovery has been effected from the glove box of the scooter and in such circumstances, it has to be construed that the same has been effected from the joint conscious possession of both i.e. the petitioner and the co-accused. It cannot be presumed at this stage that the petitioner was oblivious of carrying the contraband in the vehicle. Moreover, the possession can be physical as well as constructive. Even on the assumption that there is a lapse on the part of the Investigating Officer in not reflecting the name of the petitioner in the recovery memo, it cannot be termed to be a circumstance to conclude that the recovery has not been effected from the joint conscious possession of the petitioner and the co-accused. The quantity of contraband recovered from the possession of the petitioner and the co-accused falls in the category of commercial quantity. As such, the stringent provisions of Section 37 of NDPS Act come into play. There is nothing to suggest that the petitioner has not committed the offence and is not likely to commit the offence, if extended the concession of bail. Moreover, the petitioner is in custody only for a period of 3 months and 12 days.

As such, no justified ground is made out to extend the concession of bail to the petitioner.

Dismissed.

13.03.2023

Janki

(VIVEK PURI)
JUDGE