

Neutral Citation No.2023:PHHC:094304
IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-23847 of 2022 (O&M)
Date of Decision: July 25, 2023.

Jagdeep Singh

.....Petitioner

Vs.

State of Punjab

.....Respondent

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Manjinder Singh Saini, Advocate for the petitioner.

Mr. R.S. Khaira, DAG, Punjab.

DEEPAK GUPTA, J.

By way of this petition filed under Section 439 Cr.P.C, petitioner has prayed for grant of regular bail in case FIR No.0119 dated 23.07.2021 registered under Section 21 of NDPS Act, 1985 (for short, 'the Act') at Police Station Doraha, Police District Khanna, District Ludhiana, Punjab.

2. As per the allegations, a police party headed by SI Kuljeet Singh found car No.PB12-AD-0155 on 23.07.2021 occupied by two persons, who panicked at the sight of the Police party. He informed SI Barjinder, who reached the spot. Search was conducted and recovery of 270 grams of heroin was effected from both of them, who disclosed their names as Jagdeep Singh and Tajinder Singh. Jagdeep Singh- petitioner was driving the car. After completion of investigation, challan has already been filed in Court; charges have been framed and case is fixed for prosecution evidence.

3. It is contended by learned counsel for the petitioner that recovery was effected from the dashboard of the car and that too after the sunset but provisions of Section 42 of the Act were not complied with and

so, chances of false implication cannot be ruled out. He further contends that nothing was recovered on personal search of the petitioner; that no independent witness was joined; that investigation is already complete and that similarly situated co-accused Tajinder has already been allowed regular bail by the Court.

4. Opposing the bail petition, learned State Counsel contends that contraband of the commercial category has been recovered from the conscious possession of the petitioner and the co-accused. Learned State Counsel has drawn attention towards the reply filed by the affidavit of Shri Harsimrat Singh, Deputy Superintendent of Police, Sub Division Payal, Police District Khanna to contend that compliance of Section 42 of the NDPS Act was duly made. He referred to report under Section 42 of the NDPS Act Annexure R.1/T in this regard. It is further pointed out that co-accused Tajinder was allowed bail after observing that he was not involved in any other case but as far as petitioner is concerned, he is involved in two more cases, both registered under the NDPS Act, as per the custody certificate.

5. Replying to the afore-said contentions, learned counsel for the petitioner has drawn attention towards previous reply dated 15.11.2022 filed by the respondent- State through the affidavit of Shri Harsimrat Singh, Deputy Superintendent of Police, in which it was stated that as the car, from which the contraband was recovered, is owned by the petitioner, therefore, Section 42 of the NDPS Act did not apply in the case. It was also contended that no secret information had been received and thus, it was a case of chance recovery and so, compliance of Section 42 of the NDPS Act was not attracted. However, in the fresh reply filed by way of the affidavit dated 19.07.2023, it is being claimed that compliance of Section 42 of the NDPS Act has been made. Learned counsel

further submits that as far as two other cases against the petitioner are concerned, no recovery had been effected from the petitioner in any of them and he had been arrested under Section 29 of the NDPS Act. He further contends that quantity of the allegedly recovered contraband is marginally higher than commercial.

6. As per the custody certificate, petitioner is in custody since 23.07.2021 i.e. for the last two years. Similarly placed co-accused Tajinder has already been allowed bail by co-ordinate Bench of this Court vide order dated 03.03.2022 passed in CRM-M-8212 of 2022 (O&M). Whether compliance of Section 42 of the NDPS Act was required and made in this case, is a matter of trial, as different stand has been taken by the respondent- State in this regard in two replies filed before this Court. Further, although charges have already been framed but no witness has been examined so far and thus, trial is likely to take long time.

7. Having regard to all the aforesaid facts and circumstances, but without commenting anything on the merits of the case, petitioner is admitted to bail on his furnishing bail bonds and surety bonds to the satisfaction of learned Chief Judicial Magistrate/ Duty Magistrate concerned.

Disposed of.

Criminal misc. applications, if any, also stand disposed of.

July 25, 2023
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(DEEPAK GUPTA)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No