

**220 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CRM-M-23323-2023****Date of decision : 15.05.2023****Jaswinder Singh @ Teta @ Tita****.....Petitioner****versus****State of Punjab****..... Respondent****CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ***********Present :- Mr. Vikas Gupta, Advocate
for the petitioner.****Mr. Karunesh Kaushal, AAG, Punjab.***********RAJESH BHARDWAJ, J. (Oral)**

Petitioner has approached this Court by way of this present second petition praying for grant of regular bail in case FIR No.66 dated 13.05.2020, under Sections 22, 29 of NDPS Act, registered at Police Station Kacha Pacca, District Tarn Taran.

The present FIR was lodged by SI Bachittar Singh wherein it has been stated that on 13.05.2020 when the police party headed by him was on patrolling duty and reached on the bridge of Dayalpur then a motorcycle without number plate came from the front side on which two young men were sitting. He signalled them to stop the motorcycle then the motorcyclist tried to turn their motorcycle towards back side and they slipped and fell down then white colour intoxicant tablets which were in the polythene tied with the handle of motorcycle got scattered. The police apprehended the motorcycle riders who disclosed their name as Gurjant Singh son of Surjit Singh and pillion rider Jaswinder Singh @ Tita. The police party tried to join a public witness but could not found then SI counted intoxicant tablets in the presence of police witnesses which were

found to be 1030 intoxicant tablets. The investigation was complete. The accused were arrested at the spot on 13.05.2020.

Learned counsel for the petitioner has submitted that the petitioner was arrested on 13.05.2020 and was granted the concession of interim bail by the Additional Sessions Judge, Tarn Taran, vide order dated 20.07.2020 and was thereafter again arrested on 03.10.2022 and since then, he has been in custody and out of total 12 prosecution witnesses, none has been examined, thus, the trial is likely to take time and even thereafter no witness has been examined and the trial has not made any progress and the petitioner is not involved in any other case. It is further submitted that even as per the case of the prosecution, the present case is a case of chance recovery. He further submits that the petitioner was pillion rider on the motorcycle from which alleged recovery of intoxicant tablets was effected. He has submitted that the co-accused Gurjant Singh has already been released on bail by this Court in a petition vide order dated 01.05.2023 passed in CRM-M-20304-2023. He has further stated that the petitioner has never misused the concession of interim bail granted to him by the trial Court. The trial of the case is likely to take sufficient long time. It is further contended that from the bare perusal of allegations levelled in the FIR, it is clear that the petitioner was not in a conscious possession of the contraband. He submits that in the facts and circumstances, petitioner deserves to be granted regular bail.

Learned State counsel, on the other hand, has opposed the present petition for grant of regular bail to the petitioner and has submitted that the petitioner had fallen from the motorcycle and the police party had also seen the intoxicant tablets, which had scattered from

the polythene bag hanging on the handle of the motorcycle and thus, it cannot be said that the petitioner was not in conscious possession of the intoxicant tablets. He has submitted that out of 12 prosecution witnesses, none has been examined till date. It is further submitted that recovery in the present case is of commercial quantity and thus, the bar under Section 37 of the NDPS Act would apply.

I have heard counsel for the parties and perused the record.

Admittedly, the petitioner was arrested on 13.05.2020 and was granted the concession of interim bail by the Additional Sessions Judge, Tarn Taran, vide order dated 20.07.2020 and was thereafter again arrested on 03.10.2022 and since then, he is stated to be in custody and out of total 12 prosecution witnesses, none has been examined, thus, the trial is likely to take time and the petitioner is stated to be not involved in any other case. It is not in dispute that the petitioner has not misused the concession of interim bail granted by the trial Court. The question as to whether the recovery effected by the Sub Inspector after the tablets had fallen and were scattered on the road could be stated to be from the conscious possession of the petitioner or not, would be a matter of debate, which would be finally adjudicated after the conclusion of trial. The co-accused of the petitioner namely, Gurjant Singh has already been granted bail by this Court vide order dated vide order dated 01.05.2023 passed in CRM-M-20304-2023.

The veracity of the allegations would be assessed only after the conclusion of the trial and on the appreciation of evidence to be led by both the parties before the trial Court. This Court would refrain itself from commenting anything on the merits of the case. Keeping in view the

arguments raised by both the sides and perusing the record, this Court is of the opinion that learned counsel for the petitioner succeeds in making out a case for grant of regular bail. Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

15.05.2023
m. sharma

(RAJESH BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No