

209

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-23749-2023

Date of decision : 01.08.2023

Shamsher Singh @ Kundli**.....Petitioner****versus****State of Punjab****..... Respondent****CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ*********

Present :- Mr. Rishabh Singla, Advocate
for the petitioner.

Ms. Akshita Chauhan, DAG, Punjab.

*********RAJESH BHARDWAJ, J. (Oral)**

Petitioner has filed this second petition praying for grant of regular bail to him in case FIR No.136 dated 26.04.2022 under Sections 21 C, 29 of Narcotic Drugs and Psychotropic Substance Act, 1985, registered at Police Station Goindwal Sahib, District Tarn Taran.

As per facts of the case, the police party while on patrolling spotted a person coming on the main road on foot. On seeing the police, he got perplexed and turned backward. On seeing the police, he took out one packet from his right pocket and threw it. The police party nabbed him. On asking, he disclosed his name as Sarwan Singh @ Samma. The plastic bag thrown was also recovered. On search of the same, the Heroin was recovered from the same. On weighing, it was found to be containing 260 grams of Heroin. On asking, he disclosed that he purchased the abovesaid Heroin from Gurwinder Singh @ Jhillu @ Dhakkad son of Bhupinder Singh and Shamsher Singh alias Kundli

(petitioner). He further disclosed that he was to sell the same to Varinder Singh son of Baldev Singh, Shamsher Singh son of Jagtar Singh and Balwinder Singh @ Ajju son of Jasbir Singh Tellu. Accordingly, FIR was registered, investigation commenced and petitioner-Shamsher Singh @ Kundli son of Sukhjinder Singh was arrested on 10.10.2022. He approached the Court of learned Sessions Judge, Tarn Taran praying for grant of bail. However, after hearing counsel for both the sides, learned Sessions Judge declined the same vide order dated 16.11.2022. Aggrieved by the same, petitioner on the earlier occasion approached this Court by way of filing petition bearing CRM-M-60778-2022 which was allowed to be dismissed as withdrawn vide order dated 20.02.2023. Hence, the petitioner again approached this Court by way of filing this second petition.

It has been contended by counsel for the petitioner that the petitioner has been falsely implicated in this case. He has submitted that the petitioner was already in jail and he has been roped in the present case only on the basis of the disclosure statement of the co-accused which is not even an admissible evidence. He has submitted that the alleged contraband of 260 grams Heroin was recovered from the co-accused Sarwan Singh @ Samma and thus, as there was no recovery from the petitioner, conscious possession is also not proved against the petitioner. He submits that though the petitioner is involved in other two FIRs as well, however, in one of the FIR No.30/2018, he has been granted bail but as he could not produce the bail bonds, hence he is in jail in that case. He submits that in the present case, there is no admissible evidence against the petitioner and thus, he deserves to be granted regular bail.

Learned State counsel, on the other hand, has opposed the submissions made by counsel for the petitioner. She, on instructions from ASI Lakhwinder Singh, has submitted that the petitioner is duly named in the FIR as well in the disclosure statement of the co-accused. She has further submitted that the petitioner is involved in two more cases of the similar nature which are pending adjudication before the trial Court. She has further stated that the trial has commenced and the prosecution has examined 02 witnesses out of 12 witnesses.

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

Evidently, the petitioner in the case in hand has been named on the basis of disclosure statement of the co-accused Sarwan Singh @ Samma. Recovery of 260 grams of Heroin was effected from the co-accused and there was no recovery from the petitioner in the present case. There is no denial to the fact that the petitioner was behind bars at the time of registration of the present FIR. As submitted by learned State counsel, challan is presented, charges are framed and out of 12 prosecution witnesses, 02 witnesses including the Investigating Officer have already been examined. Out of the two other cases petitioner is already on bail in one case.

The trial of the case will take sufficiently long time. This Court would refrain itself from commenting anything on the merits of the case. 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. Keeping in view the facts and circumstances of the case and that the petitioner is involved in the case on the basis of disclosure statement, 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. If the petitioner does not furnish the bail bonds within seven days from today, then his further custody period after one week will not be counted in this case.

01.08.2023

m. sharma

(RAJESH BHARDWAJ)

JUDGE

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