

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CRM-M-28348-2022 (O & M)****Date of decision: 05.01.2023**

Karamjit @ Bachi

.... Petitioner

V/s

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Satnam Singh Gill, Advocate, for the petitioner.

Ms. Ramta Chaudhary, DAG, Punjab.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 439 Cr.P.C. is for the grant of regular bail to the petitioner in case FIR No.57 dated 13.05.2022 under Sections 304/34 IPC and Section 29 of the NDPS Act, 1985 registered with Police Station City Dhuri, District Sangrur.

2. The brief facts of the case are that an FIR No.57 dated 13.05.2022 under Sections 304, 34 IPC at Police Station City Dhuri was registered against Arwinder Singh @ Shanky son of Ranjit Singh (since granted bail vide order dated 22.11.2022 passed in CRM-M-31170-2022) on the basis of a statement of Gagandeep Singh, who stated that his younger brother-Nirmal Singh was working at Aggarwal Bhullar Medical Store, Dhuri, whose fiancé Sandeep Kaur had opened a clinic in the name and style of Guru Kirpa Clinic, Dhuri. On 12.05.2022 at about 8.40 p.m., when he alongwith his uncle Avtar Singh went to Bhullar Medical Store, Dhuri, to pick up his brother-Nirmal Singh, Arwinder Singh @ Shanky reached there

and told them to wait for 10 minutes as he and Nirmal Singh had to go somewhere for some work. Therefore, they both went away on his motorcycle. When they did not return after 10/15 minutes, he (complainant) called up his brother-Nirmal Singh who stated that it would take another 20/25 minutes more for him to come back. When he again called up on his brother's phone, then Arwinder Singh @ Shanky picked up the phone and asked them to reach the spot as something had happened to Nirmal Singh. Thereafter he (complainant) alongwith his uncle Avtar Singh reached at the spot, where his brother was lying unconscious and Arwinder Singh @ Shanky was standing near him. They took him (Nirmal Singh) to Balian Hospital, Dhuri, where the doctor declared him dead. Arwinder Singh @ Shanky was an alcoholic and a drug addict and had also got his brother hooked on to drugs. Arwinder Singh @ Shanky had administered some poisonous substance to his brother, resulting in his death. On the basis of the said statement, the present FIR under Section 304 IPC was registered.

On 13.05.2022, Gagandeep Singh (complainant) got recorded his supplementary statement wherein he stated that his brother-Nirmal Singh (deceased) and Arwinder Singh @ Shanky were consuming drugs since long and would procure the same from Raju, Karamjit Singh @ Bachi (petitioner) sons of Boli Ram, Boli Ram, son of Arjan, Sheelo wife of Sem and Shanty son of Sem. On 12.05.2022, they had come to know that his brother-Nirmal Singh and Arwinder Singh @ Shanky had brought *chitta* (drugs) from Shanty son of Sem and Sheelo wife of Sem (mother and son). On this supplementary statement, Raju, Karamjit @ Bachi sons of Boli Ram, Boli Ram son of Arjan, Sheelo wife of Sem and Shanty son of Sem were nominated as accused under Section 29 of the NDPS Act vide DDR No.44

The co-accused of the petitioner, namely, Arwinder Singh @ Shanky was arrested on 13.05.2022. The name of the co-accused Shanty was verified as Shanty Singh son of Tarsem Singh and he was arrested on 13.05.2022 and pursuant to his disclosure statement, he got recovered 04 grams of intoxicating powder (chitta) from his possession and therefore, an offence under Section 21 of the NDPS Act was added.

Accused-Karamjit Singh @ Bachi (petitioner) was arrested on 17.05.2022 and pursuant to his disclosure statement, 400 grams opium and Rs.10,000/- were recovered from him on 18.05.2022 and offence under Section 18 of the NDPS Act was added. The co-accused Sheelo @ Sheela Devi, Raju @ Raj Kumar and Boli Ram were granted the concession of interim bail by this Court and pursuant to the same, they all joined investigation.

3. The learned counsel for the petitioner contends that the allegations against the petitioner are based on *hear say* evidence and the confessions made by the co-accused in the police custody. The recovery effected from him of 400 grams of opium is a non-commercial quantity. As per the supplementary statement of the complainant, the alleged suppliers of the contraband have been granted the concession of interim anticipatory bail by this Court vide orders, Annexures P-3 to P-5. Since the petitioner is in custody since 17.05.2022 and none of the 27 prosecution witnesses had been examined so far, the petitioner was entitled to the grant of bail. Undoubtedly, there are a number of other cases registered against him (petitioner) but in terms of the judgment in '*Maulana Mohd. Amir Rashadi versus State of U.P. and another 2012 (1) RCR (Criminal) 586*' and '*Prabhakar Tewari versus State of U.P. another, (Crl. Appeal No.153 of*

criminal antecedents of an accused would not be a relevant consideration for the grant of bail.

4. The learned counsel for the State, on the other hand, while referring to the reply dated 19.08.2022 contends that the petitioner on his arrest got recovered 400 grams of opium alongwith Rs.10,000/-. He is a habitual offender having been convicted in 08 cases and is an under-trial in 07 cases. Out of the 08 cases in which the petitioner has been convicted, 03 are under the NDPS Act and 01 is under the Excise Act. Amongst the 07 cases in which the petitioner is an under-trial, 04 are under the Excise Act and 01 under the NDPS Act. He, thus, contends that the antecedents of the petitioner and the nature of cases pending against him do not entitle him to the grant of bail. Further the judgment in 'Maulana Mohd. Amrir Rashadi's case (supra) and 'Prabhakar Tewari's case (supra)' would not come to the aid of the petitioner because firstly, those cases pertain to the offences under the IPC and secondly, it has been stated in the said judgments that the role of the petitioner in the case at hand is also to be considered.

5. I have heard the learned counsel for the parties.

6. Undoubtedly, the petitioner is in custody since 17.05.2022 and the witnesses are yet to be examined. However, it is also apparent that from the petitioner, there has been recovery of 400 grams of opium and Rs.10,000/-. Further, the petitioner is an under-trial in multiple FIRs under the NDPS Act and has also been convicted in multiple FIRs under the NDPS Act. Therefore, the criminal antecedents of the petitioner do not entitle him to the grant of bail. Even otherwise, no recovery has been effected from the co-accused of the petitioner who have been granted the concession of bail by this Court. It may be pertinent to mention here that the restrictions under

Section 37 of the NDPS Act are in addition to those under Section 439 Cr.P.C.

7. In view of the above discussion, I find no merit in the present petition. Therefore, the same is dismissed.

(JASJIT SINGH BEDI)
JUDGE

January 05, 2023
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No