

CRM-M-29143-2023

-1-

(224)
IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-29143-2023
Date of Decision: 09.08.2023

HAPPY SINGH

... Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Kamaldip Singh Sidhu, Advocate
for the petitioner.

Mr. Kirat Singh Sidhu, DAG, Punjab.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 439 Cr.P.C. is for the grant of regular bail in case bearing FIR No.111 dated 17.03.2023 registered under Sections 21 & 25 of the NDPS Act (lateron in final report under Section 173 Cr.P.C. instead of Sections 21 and 21-C of NDPS Act, is enhanced) at Police Station City Barnala, District Barnala.

2. The brief facts of the case are that while the police party was on patrolling duty, a Swift Car bearing Registration No.PB-13-BA-1824 was seen parked. In the said car, two persons were sitting who were searching for something in a polythene bag. On seeing the police party, they threw the polythene bag on the back of the driver seat. They were apprehended and the driver disclosed his name as Happy Singh (petitioner) son of Malkiat Singh and the other person disclosed his name as Baljeet Singh alias Babbu son of Kaka Singh. The polythene bag was recovered and was found to contain 125

grams of heroin and an amount of Rs.2,73,000/- was also recovered from the said bag. During the course of investigation, Baljeet Singh alias Babbu made a disclosure statement that he had also kept concealed more heroin and could get the same recovered. On the basis of the said disclosure statement, he got recovered 140 grams of intoxicating powder.

During further investigation, the petitioner-Happy Singh and his co-accused Baljeet Singh disclosed that they had brought the above-said intoxicant powder from Gopi Singh resident of Amritsar and further gave the same to Gurpreet Singh @ Gol Gappa. Accordingly, Gopi Singh and Gurpreet Singh @ Gol Gappa were nominated as accused under Section 29 of the NDPS Act.

3. The learned counsel for the petitioner contends that non-commercial quantity of heroin weighing 125 grams has been recovered from the vehicle in which he was travelling along with his co-accused. Therefore, as he was in custody since 17.03.2023, none of the 12 prosecution witnesses had been examined so far and he was a first-time offender, he was entitled to the concession of bail.

4. A status report dated 09.08.2023 by way of an affidavit of Satvir Singh, DSP, Sub-Division, Barnala has been filed on behalf of the State by the learned counsel for the State. The same is taken on record. While referring to the reply, he contends that pursuant to the arrest of the petitioner and his co-accused, a further recovery of 140 grams of heroin was recovered from the co-accused Baljeet Singh @ Babbu. Therefore, as the total recovery was 265 grams i.e. more than the commercial quantity of contraband of 250

grams, the petitioner was not entitled to the concession of bail. He, however, concedes that the petitioner is a first-time offender, in custody since 17.03.2023 and none of the 12 prosecution witnesses had been examined so far.

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

6. Admittedly, at the time when the petitioner and his co-accused were arrested, they were found to be in possession of 125 grams of heroin. It would be a moot point during the course of trial as to whether the liability of the further recovery of 140 grams from the co-accused Baljeet Singh @ Babbu can be affixed on the petitioner as well. Be that as it may, even if the entire recovery of 265 grams is to be considered, the same would amount to marginally above the commercial quantity of 250 grams. In this situation, the further incarceration of the petitioner is not required.

7. Thus without commenting on the merits of the case, the present petition is allowed and the petitioner-Happy Singh son of Malkit Singh is ordered to be released on bail on his furnishing bail bonds and surety bonds to the satisfaction of learned CJM/Duty Magistrate, concerned.

8. The petitioner shall appear before the police station concerned on the first Monday of every month till the conclusion of the trial and inform in writing each time that he is not involved in any other crime other than the present case.

9. In addition, the petitioner (or anyone on his behalf) shall prepare an FDR in the sum of Rs.2,00,000/- and deposit the same with the Trial

CRM-M-29143-2023

-4-

Court. The same would be liable to be forfeited as per law in case of the absence of the petitioner from trial without sufficient cause.

10. The petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

09.08.2023
JITESH

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