

2023:PHHC:089013
IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-M-32585-2023
Date of Decision: 17th July, 2023

Jaspal Singh @ Gogi @ Jagga ... Petitioner
Versus

State of Punjab ... Respondent

CORAM : HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Piyush Sharma, Advocate for the petitioner.
Mr. H.S. Sitta, Deputy Advocate General, Punjab.

AVNEESH JHINGAN , J.(Oral)

1. This first petition is filed seeking regular bail in case of FIR mentioned below :-

FIR No.	Date	Police Station	Sections
157	25.9.2021	Guruharsahai, District Ferozepur	21 and 23 of Narcotic Drugs and Psychotropic Substances Act, 1985

2. Learned counsel for the petitioner claims parity with co-accused Surinder Singh @ Shalinder Singh who was granted regular bail by this court on 26.5.2022 in CRM-M-12602-2022.

3. On 26.5.2022, the following order was passed :-

“Regular bail is sought in FIR No.157 dated 25.9.2021, under Section 21, 23 NDPS Act, 1985, registered at Police Station Guru Har Sahai, District Ferozepur, on the basis of parity with co-accused Gurdev Singh @ Baba, who was granted bail by this Court on 7.2.2022 by passing the following order:
"The present petition has been filed under Section 439 Cr.P.C. for the grant of regular bail to the petitioner in FIR No. 157

dated 25.09.2021, registered under Sections 21, 23, 61, 85 of Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Guru Harshai, District Ferozepur.

Learned counsel for the petitioner argues that the petitioner was arrested in connection with FIR No. 158 dated 25.09.2021 with the allegation that as per secret information received, he was involved in smuggling of the Heroin and on 25.09.2021 while he was searching for the contraband sent across from the International Border, he was apprehended though, no contraband was recovered from him, which is clear from the allegations alleged in FIR No. 158 dated 25.09.2021 but thereafter petitioner was involved in the present case being FIR No. 157 dated 25.09.2021 with the allegation that the BSF had recovered 2 kgs. of Heroin on 25.09.2021 found lying inside Indian Territory allegedly sent across from the International Border and on the basis of the disclosure statement of the petitioner in FIR No. 158 dated 25.09.2021 that he was in fact looking for the said contraband, when he was arrested in connection with FIR No. 158 dated 25.09.2021.

Learned counsel for the petitioner submits that no recovery of the contraband has been done from the possession of the petitioner rather, petitioner has been involved on the basis of the disclosure statement only, which carries no value as of now. Learned counsel for the petitioner further informs this Court that petitioner has already been granted bail in FIR No. 158 dated 25.09.2021 and as no recovery has been effected from the petitioner in the present case also and the petitioner has been connected with the allegations alleged in the present FIR only on the basis of the confessional statement before the police and as the investigation is already over, he may kindly be granted the concession of regular bail.

Notice of motion.

Mr. Sandeep Singh Deol, learned Deputy Advocate General, Punjab, who has joined the proceedings through video conference, keeping in view the service of advance copy of petition, accepts notice on behalf of the respondent-State.

Learned State counsel submits that FIR No. 157 as well as FIR No. 158 dated 25.09.2021 were registered on the same day though, with different allegations. Learned State counsel submits that the petitioner was arrested on the basis of secret information while he was looking for a contraband for which FIR No. 158 dated 25.09.2021 was registered and it was upon disclosure statement of the petitioner before the police, he was related with the recovery of 2 kgs. of Heroin found lying inside Indian Territory though, from another area on the International Border, petitioner was nominated as accused and was arrested in FIR No. 157 dated 25.09.2021 as well. Learned State counsel submits that the actual recovery of the contraband has not been effected from the petitioner but he has been co-related with the recovery of 2 kgs. of Heroin found lying inside Indian Territory on International Border, which is part of the present FIR. though on the basis of his disclosure/confessional statement before police.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

Once, no actual recovery has been effected from the petitioner, rigors of Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 will not come into the present case. Rather, petitioner has been arrested after the recovery of a contraband in FIR No. 157 dated 25.09.2021 and the said contraband is being connected to the petitioner on the basis of his disclosure statement has been brought to the notice of this Court as of now and as the trial is likely to take some time before the same concludes, no justifiable purpose will be achieved in keeping the

petitioner behind the bars during the entire period of trial as the petitioner has undertaken before this Court that he will not influence the trial or the witnesses in any manner, the petitioner has made out a case for the grant of regular bail.

The petitioner is directed to be released on regular bail in this case subject to the satisfaction of the trial Court/Duty Magistrate concerned.

However, it is made clear that anything observed herein shall not be construed to be an expression of any opinion on the merits of the case."

Learned State counsel has filed reply, however, he is not able to distinguish parity of the petitioner qua the co-accused so far as granted of bail is concerned.

The petitioner is granted bail on the basis of parity with coaccused, on furnishing surety bonds to the satisfaction of the Chief Judicial Magistrate/ Duty Magistrate concerned.

The petition is allowed.

It is clarified that the observations made hereinabove shall not be construed as an expression of opinion on the merits of the case.

Since the main case has been decided, the pending application, if any is rendered infructuous."

4. Learned counsel for the State though opposes the prayer for grant of bail, he is not in a position to distinguish the case of the petitioner qua the co-accused so far as grant of bail is concerned.

5. Without commenting on the merits of the case, on the basis of parity of petitioner vis-a-vis co-accused so far as grant of bail is concerned and though the investigation is complete conclusion of trial is likely to take time, the petitioner is granted bail subject to his furnishing bail bonds to the satisfaction of the Chief Judicial Magistrate/ Duty Magistrate concerned.

The petition is allowed.

6. Since the main case has been allowed the pending application(s), if any is rendered infructuous.

(AVNEESH JHINGAN)
JUDGE

17th July, 2023

anuradha

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No