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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-33390-2023 (O & M)
Date of decision: 16.11.2023

Sher Singh @ Shera

.... Petitioner

V/s

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Sukhbir Maandi, Advocate,
for the petitioner.

Mr. Kirat Singh Sidhu, 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.225 dated 06.09.2022 under Section 21 of the NDPS Act, 1985 at Police Station Division No.8, District Police Commissionerate Jalandhar.

2. The brief facts of the case are that while the police party was on the patrolling duty, two persons, namely, Lovejeet Singh and Vishwas Kumar were apprehended on the basis of suspicion. During their search, 400 grams of heroin wrapped in a polythene bag was recovered from the right pocket of the pant worn by Lovejeet Singh and 300 grams wrapped in a polythene bag was recovered from the right pocket of the pant worn by the accused-Vishwas Kumar.

During investigation, Lovejeet Singh and Vishwas Kumar suffered a disclosure statement that they had brought the said heroin from

one Rahul who brought the same from Sher Singh @ Shera (petitioner) and
SUKHPREET KAUR
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Ajay Singh @ Ajay. Thereafter, Rahul, Sher Singh @ Shera and Ajay Singh @ Ajay were nominated as accused in the present case on 10.09.2022 and the offence under Section 29 of the NDPS Act was added.

On 09.12.2022, on the basis of secret information, Sher Singh @ Shera (petitioner) and Ajay Singh were apprehended in the area of Focal Point, Chowk, Jalandhar. During their search, 255 grams of heroin wrapped in a polythene envelop was recovered from the left pocket of the pant worn by Ajay Singh and 255 grams heroin wrapped in polythene envelope was recovered from the left pocket of the pant worn by Sher Singh @ Shera.

4. The learned counsel for the petitioner contends that there is a violation of the mandatory provisions of the Act regarding the search and seizure. No independent witness of recovery was joined during the course of the recovery proceedings. Since the recovery was marginally above the commercial quantity of 250 grams, the petitioner was a first-time offender, in custody since 09.12.2022 and none of the 11 prosecution witnesses had been examined so far, he was entitled to the grant of bail.

5. The learned counsel for the State while opposing the bail application contends that the offences of this kind are on the rise and commercial quantity of contraband has been recovered from the accused because of which Section 37 of the Act would be a bar to the grant of bail. He, however, concedes that the petitioner was a first-time offender, in custody since 09.12.2022 and none of the 11 prosecution witnesses had been examined so far.

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

7. In the cases of 'Sukhchain Singh @ Manga Versus State of

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State of Punjab, CRM-M-46244-2022 decided on 19.01.2023, Hari Yadav @ Haiya versus State of Punjab (CRM-M-37645-2021)' decided on 11.11.2022, 'Jang Kanwar Versus State of Punjab (CRM-M-53415-2021)' decided on 19.01.2022, 'Shankar Prashad Chanau Versus The State of Punjab, CRM-M-24090-2020, decided on 27.08.2020, Gurpreet Kumar Versus State of Punjab, CRM-M-17021-2021, decided on 31.08.2021, Salim Versus State of Haryana, CRM-M-42436-2020, decided on 24.02.2021, Gagandeep Versus State of Punjab, CRM-M-3055-2021, decided on 27.01.2021, Gurpreet Singh @ Gopi Versus State of Punjab, CRM-M-41039-2019, decided on 26.02.2020, Dalbara Singh Versus State of Punjab, CRM-M-47880-2022 decided on 16.01.2023', and Vivek Watts versus State of Punjab, CRM-M-13791-2022 decided on 15.02.2023, where the recovery from the accused was marginally above the commercial quantity for the respective contraband in each case, the Court granted bail to the accused therein.

8. In the present case, the alleged recovery from the petitioner is of 255 grams of heroin, which is marginally above the commercial quantity of 250 grams. The petitioner is a first time offender with no other case under the NDPS Act registered against him. In this situation, the provisions of Section 37 of the NDPS Act can be relaxed to an extent and the case of the petitioner can be considered for the grant of bail, moreso, when he is in custody since 09.12.2022 and none of the 11 prosecution witnesses have been examined so far.

9. Thus, without commenting upon the merits of the case, the present petition is allowed and the petitioner, namely, Sher Singh @ Shera

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is ordered to be released on bail to the satisfaction of the Trial Court/Duty Magistrate concerned.

10. The petitioner shall appear on the first Monday of every month before the police station concerned till the conclusion of the trial and furnish an affidavit each time that he is not involved in any other case except the present one.

11. In addition, the petitioner (or anyone on his behalf) shall prepare an FDR in the sum of Rs.1,00,000/- and deposit the same with the Trial 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.

(JASJIT SINGH BEDI)
JUDGE

November 16, 2023
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No