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

**CRM-M-36891-2023
Date of decision : 12.12.2023**

AMRIK SINGH

....Petitioner

Versus

STATE OF PUNJAB

....Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. K.S. Brar, Advocate
for the petitioner.

Mr. Jaswinder S. Arora, DAG, Punjab
with ASI Ravinder Kaur.

PANKAJ JAIN, J. (ORAL)

This petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case F.I.R. No.09 dated 17.12.2021 registered for the offences punishable under Sections 21(c), 23, 25, 27, 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act') and Sections 489A, B, C of IPC, 1860 at Police Station SSOC, Fazilka District Fazilka.

2. Custody Certificate of the petitioner has been filed today in Court. The same is taken on record.

3. As per the allegations levelled in the FIR it has been alleged as under :

“xxx Today, myself ASI along with C-2 Daljit Singh No. 2C/234

CT Sanjay Kumar No. 2334/ Int. PHG rajesh Kumar No. 12431 on government car bearing registration No.PB08-DS-0928 being driven by ct kewal Krishan No. 2346/CT were present at T-point, Ferozepur -Fazilka road to Link road village Rana in connection with patrolling and search of bad elements, then a special informer came to me and given information that Amrik Singh son of Surjit Singh resident of Habeeb Wala, Police Station Sadar Ferozepur district Ferozepur, Rajinder Singh son of Karnail Singh resident of Mastey Ke, Police Station Arif Ke, District Ferozepur, Kulwant Singh son of Mehal Singh resident of Kishore Wale Jhugge, Police Station Mamdot, District Ferozepur and Fauja Singh son of Thakar Singh resident of Dhani village Chhota Gulaba, Police Station Sadar Fazilka District Fazilka are indulged in the smuggling of Heroin and fake Indian currency, who have relations with the smugglers of Pakistan. They while talking to the Pakistan smugglers through international /social media mobile phone, bringing huge quantity of Heroin and fake Indian Currency through the barbed wire fixed on the Indo-Pak Border and now they have got thrown the huge quantity of Heron and fake Indian currency through barbed wire fenced on the Indo-Pak border in the area of BSC post Mozam District Fazilka and presently they are present in the Dhani of Fauja Singh above said in village Chhota Gulaba, if the immediate raid be done and inquiry be conducted by apprehending the above said persons then huge quantity of Heroin and fake Indian currency brought by them from Pakistan Smugglers cam be recovered from them. The information is true and reliable, therefore the said matter has been brought to the notice of Hon'ble Assistant Inspector General of Police, Police Station SSOC Sadar Ferozepur, District Ferozepur. The above said act of Amrik Singh son of Surjit Singh resident of Habeeb Wala, Police Station Sadar Ferozepur district Ferozepur, Rajinder Singh son of Karnail Singh resident of Mastey Ke, Police Station Arif Ke, District Ferozepur, Kulwant Singh son of Mehal Singh resident of Kishore Wale Jhugge, Police Station

Mamdot, District Ferozepur and Fauja Singh son of Thakar Singh resident of Dhani village Chhota Gulaba, Police Station Sadar Fazilka District Fazilka is covered under section 21-C, 23,29 of NDPS Act, 1985 and section 489-A, 489-B and 489-C Of IPC, 1860, therefore the Ruga is being sent to the Police Station SSOC Fazilka by the hand of CT-2 Daljit Singh NO. 2C/234 for registration of case, after register case, number of the same be intimated. Special reports be issued, PCR be intimated and competent officer be sent to the spot for further proceedings. A separate written report is being sent to the Hon Hon'ble A.I.G, Police Station SSO Fazilka. Within the area of Ferozepur -Fazilka road to link road village Rana T-point. Sd/- Hardial Singh No. 2471/Ferozepur, ASI, Police Station SSOC Fazilka dated 17.12.2021 at 2.05 PM.”

4. The petitioner is behind bars since 21.03.2023 and has by now undergone actual custody of more than 8 months and 22 days. Counsel for the petitioner submits that primary allegation in the present case is against Fauja Singh, Kulwant Singh and Rajinder Singh who suffered disclosure leading to recovery of *heroin*. No recovery has been attributed to the petitioner and the only allegation that too based upon the secret information is that the petitioner was also one of the accomplices of the aforesaid three main accused. He further relies upon order dated 17.10.2023 passed in CRM-M-15719-2023 whereby the other co-accused Vikram Singh has been granted bail observing as under :

“xxx

5 Learned counsel for the petitioner by referring to the same contends that even if extra judicial confession of Rajinder Singh, Kulwant Singh and Fauja Singh in police custody is to be believed then as per the status report they only disclosed that it

was them only who smuggled heroin from Pakistan smugglers and hid the same in the pit near cremation site near the house of accused Fauja Singh. There is nothing incriminating against the petitioner in the disclosure made by Rajinder Singh, Kulwant Singh and Fauja Singh. The basis for nominating the petitioner as per the status report is the alleged confession statement made by the petitioner himself stating that he used to receive smuggled heroin from his father-accused Fauja Singh and above noted accused. The same cannot be read to implicate the petitioner in this case.

6 Further reliance is being placed upon law laid down by Apex Court in the case of *Tofan Singh Vs. State of Tamil Nadu, (2021) 4 SCC 1* to submit that the confessional statements made in police custody are hit by provisions of Evidence Act and are not admissible in evidence. Learned counsel for the petitioner further contends that there is no recovery effected pursuant to the disclosure made by the petitioner to make it admissible under Section 27 of the Evidence Act.

7 The petitioner is behind bars for more than 1 year, 9 months and 28 days. The petitioner has clean antecedents and there is no record of the petitioner having ever indulged in activities relating to NDPS. He has been falsely nominated merely for the reason that he is son of late Fauja Singh, who was one of the main accused in the present FIR.

8 Learned State counsel is not in a position to dispute the aforementioned factual assertions based on record.

9 I have heard learned counsel for the parties and have gone through the records of the case.

10 Without commenting on the merits of the case and considering the incarceration suffered by the petitioner, the present petition is allowed. The petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the Ld. Trial Court/Duty Magistrate, concerned. However, in addition to conditions that may be imposed by the Trial Court/Duty Magistrate concerned, the petitioner shall remain bound by the following conditions :-

- (i) *The petitioner shall not mis-use the liberty granted.*
- (ii) *The petitioner shall not tamper with any evidence oral or documentary during the trial.*
- (iii) *The petitioner shall not absent himself on any date before the trial.*
- (iv) *The petitioner shall not commit any offence while on bail.*
- (v) *The petitioner shall deposit his passport, if any with the trial Court.*
- (vi) *The petitioner shall give his cellphone number to the police authorities and shall not change his cell-phone number without permission of the trial Court.*
- (vii) *The petitioner shall not in any manner try to delay the trial.*

11 Needless to say that anything observed herein shall not be construed to be an opinion on the merits of the case.”

5. Ld. State Counsel does not dispute that till now apart from the disclosure made by the aforesaid three accused there is nothing incriminating against the petitioner and there is no recovery made from him.

6. I have heard counsel for the parties and have gone through records of the case.

7. In view of above, without commenting on the merits of the case, keeping in view the incarceration already suffered by the petitioner and granting parity *viz-a-viz* Vikram Singh, the present petition is allowed. The petitioner is ordered to be released on bail on his furnishing bail bonds/surety bonds to the satisfaction of the Trial Court/Duty Magistrate concerned.

8. However, in addition to conditions that may be imposed by the Trial Court/Duty Magistrate concerned, the petitioner shall remain bound

by the following conditions :-

- (i) The petitioner shall not mis-use the liberty granted.
- (ii) The petitioner shall not tamper with any evidence oral or documentary during the trial.
- (iii) The petitioner shall not absent himself on any date before the trial.
- (iv) The petitioner shall not commit any offence while on bail.
- (v) The petitioner shall deposit his passport, if any with the trial Court.
- (vi) The petitioner shall give his cellphone number to the police authorities and shall not change his cellphone number without permission of the trial Court.
- (vii) The petitioner shall not in any manner try to delay the trial.

9. In case of breach of any of the aforesaid conditions and those which may be imposed by the Trial Court, the prosecution shall be at liberty to move cancellation of bail of the petitioner.

10. Needless to say that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

December 12, 2023
Dpr

(Pankaj Jain)
Judge

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No