

CRM-M-41373-2023 (O & M)

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

CRM-M-41373-2023 (O & M)
Date of Decision: 28.08.2023

Kamaljit Singh

... Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Tejinder Pal Singh, Advocate,
for the petitioner.

Ms. Ramta K Chaudhary, 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 to the petitioner in case bearing FIR No.85 dated 17.07.2022 under Section 21/25/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station Barnala.

2. The brief facts of the case are that while the police party was on patrolling duty, a secret informer informed that Gurjit Singh, Kamaljit Singh @ Kamal (petitioner) and Punit Kumar @ Puneet Singla (since granted bail vide order dated 24.08.2023 passed in CRM-M-60939-2022) collectively used to sell intoxicant substance (heroin) in the areas of village Theekriwala and Naiwal on their motorcycle Platina Black coloured bearing registration

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No.PB 19 N 8868. Cases already stood registered against Gurjit Singh and Kamaljit Singh. On that day also, all the three on their motorcycle were intending to sell heroin in these villages by bringing the same from outside the State. If a search was conducted, those three persons could be apprehended. Believing the information to be true, the instant FIR came to be registered. Thereafter, when the police party raided the area of Cremation ground, Theekriwala, then, three persons from the opposite were seen coming on a motorcycle. On seeing the police party, they tried to turn back. They were apprehended on suspicion. The driver of the motorcycle disclosed his name as Kamaljit Singh @ Kamal (petitioner). The persons sitting in the middle disclosed his name as Gurjit Singh and the person sitting at the back disclosed his named as Punit Kumar @ Puneet Singla. On a search being conducted, the recovery of 280 grams of heroin wrapped in a transparent polythene envelope of white colour alongwith a mobile phone was effected from the left side dubb of Gurjit Singh. From Kamaljit Singh, a mobile phone alongwith some currency was recovered and from Punit Kumar @ Puneet Singla, one mobile phone was recovered.

3. The learned counsel for the petitioner contends that no recovery of any contraband whatsoever had been effected from the petitioner. From his personal search, only one mobile phone and some currency was recovered. 280 grams of heroin which was wrapped in an envelope was recovered from the dubb of Gurjit Singh and not from anyone else. As the said contraband was not visible to the naked eyes, the petitioner could not be said to be in conscious possession of the same. As he was in custody since 17.07.2022 and

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only 07 out of the 15 prosecution witnesses had been examined so far, he was entitled to the concession of bail, moreso as his co-accused Puneet Singla had been granted the similar concession.

4. The learned counsel for the State, on the other hand, contends that the petitioner alongwith his co-accused had been duly named in the secret information, leading to the registration of the FIR. Consequently, three accused came to be arrested, though, the recovery was effected from one of the accused. He, however, concedes that the petitioner is a first-time offender, in custody since 17.07.2022 and only 07 out of the 15 prosecution witnesses had been examined so far.

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

6. Whether the petitioner could be said to be in conscious possession of the contraband recovered from his co-accused shall be examined during the course of the trial. Admittedly, he is in custody since 17.07.2022 and only 07 out of the 15 prosecution witnesses have been examined so far. Therefore, the trial in the present case is not likely to be concluded anytime soon. Even otherwise, he is stated to be a first-time offender and his co-accused has been granted the similar concession. In this situation, the further incarceration of the petitioner is unwarranted as a *prima facie* satisfaction can be recorded as envisaged under Section 37 of the NDPS Act.

7. Thus without commenting on the merits of the case, the present petition is allowed and the petitioner-Kamaljit Singh is ordered to be released

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on bail subject to her 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.50,000/- 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

August 28, 2023
sukhpreet

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