

209(3)

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

**CRM-M-45049-2022(O&M)
Date of Decision: 16.05.2023**

GURPREET SINGH @ MANI

...Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Vipul Jindal, Advocate
for the petitioner.

Mr. Subhash Godara, Addl. A.G., Punjab.

HARSH BUNGER, J.

Petitioner has filed the present petition under Section 439 of the Code of Criminal Procedure, 1973, seeking regular bail, in case FIR No.35 dated 14.05.2022 (Annexure P-1), registered under Sections 399, 402 of the Indian Penal Code, 1860 (for short 'the IPC') and Section 25 of the Arms Act, 1959 (offence under Sections 21(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, added later on) (for short 'the NDPS Act'), at Police Station Airport, District Police Commissionerate, Amritsar.

2. Pursuant to the advance copy of petition having been served upon learned State counsel, status report by way of an affidavit of Sh. Kamaljit Singh, PPS, Assistant Commissioner of Police, Airport, Amritsar, on behalf of respondent-State of Punjab, has been filed, which is already on record.

3. Custody certificate dated 22.02.2023 of the petitioner has been filed by learned State counsel, which was taken on record, vide order dated 23.02.2023 passed by this Court.

4. Succinctly, the above-said case FIR was registered on the statement of Station House Officer, Police Station Airport, Amritsar City, wherein it was stated that on 14.05.2022, he along with his fellow employees, was present at T-Point, Airport Road, Amritsar in his official vehicle, carrying laptop and printer, for patrolling in search of bad elements, when one secret informer informed that Amritpal Singh son of late Rajan Singh, resident of Village Cheema Kalan, Tarn Taran (now at Civil Colony, Airport Road, Amritsar); Ritak son of Sunil Kumar resident of Khai Mohalla, outside Lahori Gate, Amritsar; Gurpreet Singh son of Balbir Singh, resident of Jandiala Guru; Rahul son of Peter, resident of Khai Mohalla, Lahori Gate, Amritsar and Suchan Sahib son of Raj Kumar, resident of Inside Khazana Gate, Amritsar, who commit lootings, snatchings and different cases are registered against them at different police stations; are boarded on separate vehicles and have come to Quarter No.F-2, Blessing City, Behind Radison Hotel, Ajnala Road, Amritsar and they are in the look out of committing some big dacoity and are having illegal arms/weapons etc. It was informed that in case, a raid is conducted immediately then the said persons can be apprehended along with illegal weapons.

5. Finding the said information reliable, a *ruqa* was prepared and sent to the Police Station for registration of FIR under Sections 399, 402 IPC and Section 25 of the Arms Act.

6. As per the status report, upon receipt of *ruqa* in the police station, the above said FIR was registered and thereafter, a police party under supervision of Inspector Supinder Kaur, Station House Officer, Police Station Airport, Amritsar City and another police party of C.I.A. Staff, Amritsar City, conducted raid at the informed place, where the accused

persons while sitting in the afore-said Flat No.F-2 (2nd Floor), Blessings City, backside Radison Hotel, Ajnala Road, Amritsar, were planning to commit some big crime. Accordingly, they were apprehended with the help of the police officials. However, during personal search of accused, the following recovery/ies was/were effected from them ;

<i>Name of the accused</i>	<i>Recovery</i>
<i>Amritpal Singh</i>	<i>One knife was recovered from his left flank, five Indian currency notes of Rs.100 each and one mobile phone VIVO, were recovered from his pockets.</i>
<i>Ritik Malhotra</i>	<i>One illegal pistol inscribed with P-Beretta-Call and Made in Italy loaded with 04 live cartridges of 7.65KF without having any license or valid document, was recovered from his left flank.</i>
<i>Gurpreet Singh</i>	<i>One small sickle was recovered from his left flank.</i>
<i>Rahul</i>	<i>One small sword was recovered from his left flank.</i>
<i>Suchan Sahib</i>	<i>One knife was recovered from his left flank.</i>

7. The afore-said weapons along with vehicles i.e. one car Vitara Brezza-Z No.CH01-BJ-4687, Car I20 No.PB02-DY-1395, Ford Figo No.PB02-BQ-6300, were taken into police possession.

8. As per status report, accused Gurpreet Singh (petitioner), suffered a disclosure statement on 15.05.2022 that he along with Harpej Singh @ Javed son of Dharam Singh, resident of Village Loharka, Jagmeet Singh @ Meet son of Ajmer Singh resident of House No.7, near Jania Hospital, Shekhfatta, Jandiala Guru, Amritsar and Vinay son of Buta Ram resident of Sidhu Colony, Vairawal Road, Jandiala Guru, Amritsar, were indulged in purchasing and selling heroin. Accordingly, Harpej Singh @ Javed, Jagmeet Singh @ Meet and Vinay Kumar, were also

nominated as accused in this case. Thereafter, Jagmeet Singh @ Meet, was arrested on 15.05.2022 on the identification of accused-Gurpreet Singh. It is further stated in the status report that on 16.05.2022, on the basis of disclosure statement suffered by petitioner-Gurpreet Singh @ Mani, 105 grams of *heroin*, which was kept concealed by him under the water tank of above-said Flat No.F-2, backside Radisson Hotel, Airport Road, Amritsar, was recovered, which was taken into possession as per procedure; accordingly, offence under Sections 21-B and 29 of the NDPS Act, was added vide GDR No.43 dated 16.05.2022. Thereafter, Jagmeet Singh @ Meet and Gurpreet Singh (present petitioner) along with parcel of contraband was produced before the Area Magistrate and proceedings under Section 52-A of the NDPS Act were initiated and the sample parcel of the *heroin* was deposited with the Forensic Science Laboratory. As per the Forensic Science Laboratory report, *diacetylmorphine (heroin)* was found therein.

9. As per status report, Vinay Kumar, was granted interim bail vide order dated 04.07.2022 passed in **CRM-M-28016-2022**, which was subsequently made absolute vide order dated 11.10.2022. It is further revealed from the status report that upon completion of investigation, challan stands presented before the Court on 05.08.2022 against Amritpal Singh, Ritik Malhotra, Gurpreet Singh, Rahul, Suchan Sahib, Jagmeet Singh @ Meet and Vinay.

10. Learned counsel for the petitioner has submitted that the petitioner has been falsely implicated in this case on the basis of allegations that recovery of *daatar* has been recovered from him, whereas, no over act has been attributed to the petitioner with the aid of said *daatar*. Learned

counsel further submits that the alleged recovery of *105 grams of heroin* has been foisted upon petitioner and even otherwise, the same would fall under non-commercial quantity and the bar under Section 37 of the NDPS Act, is not attracted. Learned counsel for the petitioner further submitted that another co-accused (Vinay) has already been granted bail by this Court vide order dated 04.07.2022 passed in **CRM-M-28016-2022**, which was subsequently made absolute vide order dated 11.10.2022.

11. It is submitted that the investigation in this case is complete and challan already stands presented. It is stated that the petitioner has been in custody since 15.05.2022; the trial is likely to take some time to conclude and no useful purpose would be served by keeping him behind the bars. Learned counsel for the petitioner submitted that the petitioner is ready to abide by all the conditions as may be imposed by this Court or by trial Court; accordingly, prayer for grant of regular bail is made.

12. Per contra, learned State counsel has opposed the prayer for grant of regular bail to the petitioner on the ground of seriousness and gravity of the offence. While referring to the status report, learned State counsel has submitted that the petitioner is a habitual offender and is also involved in four other cases i.e. FIR No.40 dated 17.03.2021, registered under Section 21-B of the NDPS Act, at Police Station Kot Bhai, District Sri Muktsar Sahib, wherein *310 grams heroin* was recovered; FIR No.184 dated 05.09.2013 registered under Section 22 of the NDPS Act, at Police Station Jandiala, Amritsar Rural; FIR No.41 dated 06.02.2020, registered under Sections 21 and 29 of the NDPS Act, 307 IPC, 25 of the Arms Act, at Police Station Jandiala, Amritsar Rural and FIR No.110 dated 09.06.2021,

registered under Section 42-A of the Prison Act, at Police Station City Hoshiarpur. Accordingly, prayer for dismissal of the instant petition is made.

13. Learned counsel for the petitioner, in rebuttal, has submitted that as per custody certificate, the petitioner stands acquitted/discharged in case FIR No.184/2013 and in case FIR No.110 dated 09.06.2021, the petitioner is on bail. In so far as case FIR No.41 dated 06.02.2020 is concerned, the petitioner has been granted bail vide order dated 17.03.2022 passed in **CRM-M-17503-2020** (Annexure P-9). Learned counsel for the petitioner has further relied upon the judgment of Hon'ble Supreme Court in ***Maulana Mohd. Amir Rashadi v. State of U.P. and another, 2012(2) SCC 382*** to contend that the facts and circumstances of the present case are to be seen while deciding a bail application and the bail application of the petitioner cannot be rejected solely on the ground that the petitioner is involved in other cases. The relevant portion of the said judgment is reproduced herein below :-

“As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.”

14. I have heard learned counsel for the parties; perused the paper book; status report as well as the custody certificate of the petitioner.

15. In the instant case, the petitioner has been nominated as an accused on the basis of disclosure statement suffered by him and he has been in custody for last 09 months and 08 days (as on 22.02.2023). As per custody certificate, the petitioner is involved in three other cases

i.e. FIR No.110 dated 09.06.2021; wherein petitioner is on bail, FIR No.184 dated 05.09.2013, wherein petitioner stands acquitted/discharged and FIR No.41 dated 06.02.2020, wherein also, the petitioner is on bail. The investigation in this case is complete and even challan stands presented in the Court. Initially, this case was registered under Section 399, 402 IPC and Section 25 of the Arms Act; however, it is upon recovery of *105 grams of heroin*, on the disclosure statement of the petitioner, the offence under Section 21-B and 29 of the NDPS Act was added vide GDR No.43 dated 16.05.2022. The alleged recovery of 105 grams of *heroin* at the instance of petitioner would fall in category of “non-commercial” quantity and the bar under Section 37 of the NDPS Act would not be attracted. Co-accused of the petitioner namely, Vinay, has already been granted anticipatory bail by the Co-ordinate Bench of this Court vide order dated **11.10.2022** passed in **CRM-M-28016-2022**. Similarly, other co-accused namely, Suchan Sahib @ Sujal Mattu and Amritpal Singh, have been granted regular bail vide separate orders dated **01.09.2022** passed by a Co-ordinate Bench of this Court in **CRM-M-37502-2022** and **CRM-M-32552-2022**, respectively. In such circumstances, the trial of the case would take a long time to conclude and no useful purpose would be served by keeping the petitioner behind the bars for an indefinite period.

16. Keeping in view the above-said facts and circumstances and in view of the law laid down in **Maulana’s** case (*supra*), the instant petition is allowed and the petitioner is ordered to be released on regular bail on his furnishing heavy bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate concerned and subject to him not being required in any other case. However, before release, the concerned Station House

Officer be informed and the petitioner shall inform the concerned Station House Officer about his address at which he intends to reside during the pendency of the case and any change in the address shall be communicated to the concerned Station House Officer, forthwith. The petitioner would also furnish his telephone number to the concerned Station House Officer. He shall appear before the police station concerned on first Monday of every month till the conclusion of the trial and every time inform in writing that he is not involved in any other crime other than the case(s) mentioned in the present order.

17. In addition, the petitioner (or any one on his behalf) shall prepare a Fixed Deposit Receipt 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.

18. Nothing expressed here-in-above shall be construed to be an observation on merits of the case and the facts and circumstances recorded above are only for consideration of the prayer for bail at this stage.

19. The petition is accordingly disposed of.

May 16th, 2023
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No