

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

CRM-M-50643-2023 (O&M)
Reserved on: 23.11.2023
Pronounced on: 24.11.2023

State of Punjab

... Petitioner(s)

Versus

Malkeet Singh alias Kala

...Respondent (s)

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present:- Mr. Ravinder Singh, AAG, Punjab
for the petitioner(s).

Mr. Vipul Goel, Advocate as Legal Aid Counsel
for the respondent.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
4	10.01.2021	Cantt. Ferozepur	21, 23, 29, 61, 85 NDPS Act

1. Seeking cancellation of bail, State has come up before this Court under Section 439(2) CrPC, on the ground that while granting bail, this Court was misled by the petitioner, to believe that the alleged quantity attributed to the petitioner was 100 gms, but in fact, based on the disclosure statement of the petitioner, the police had recovered 4 kg of heroin, which was 60 times of the commercial quantity.
- 2, Despite service, the respondent-accused did not turn up and he is stated to be in custody in some other case. As such, this Court had appointed a legal aid counsel to represent the respondent-accused.
3. Today, I have heard legal aid counsel at length as well as the State counsel.
4. I had also summoned the original file of previous bail petition i.e. CRM-M-16768-2022. In paragraph no.13 of the said bail petition, the petitioner had explicitly mentioned that the alleged recovery was 100 grams. In fact, the petitioner had misled

this Court by concealing the fact that after recovery 100 grams of heroin, based on his disclosure statement, the police had also recovered further 4 kg. of heroin from the place disclosed by him. Thus, in total, the recovery was 100 grams and 4 kg. in two tranches and not 100 grams, as projected by the petitioner.

5. Legal aid counsel submits that the counsel who had previously represented the respondent-accused did not intentionally misled this Court but it was on the instructions of the accused that the alleged quantity was shown as 100 gms and observation should not be made against the previous counsel for misleading the Court. Legal aid counsel further argues that the total quantity which was attributed to the respondent-accused was 4.1 kg which falls in commercial quantity and as such, Section 37 NDPS rigours were available. He further submits that in case this Court cancels the bail granted to the respondent-accused, he should be given liberty to file a fresh bail petition on merits dealing with commercial quantity enabling him an opportunity to satisfy the conditions of Section 37 NDPS Act. He further submitted that merely because previously, the respondent-accused was able to secure bail by misrepresentation by mentioning the alleged quantity as 100 grams, should not come in his way in case he files a fresh bail, on merits, because in case this Court refrain/restricts him from filing such petition, it would amount to retribution, which is not the spirit of criminal jurisprudence. I am in total agreement with this submission made by legal aid counsel, who has tried to defend the respondent-accused in best possible manner in the given scenario. However, it remains undisputed that the State had recovered initially, 100 grams of heroin and after that, 400 kg. of heroin and in all 4.1 kg of heroin, which falls in commercial quantity and this Court while granting bail was misled to believe that the quantity of the alleged contraband was 100 grams, which was 40% of the upper limit of the commercial quantity.

6. Thus, in the peculiar facts and circumstances of the case, the present petition is allowed and the order dated 3.2.2023, vide which this Court had granted the bail, is recalled and bail bonds of the petitioner are cancelled. Petitioner is already stated to be in custody in some other case and he be treated to be in custody in this case also. State is directed to send communications in this regard to all the concerned police stations where FIRs against the petitioner are pending.

7. It is clarified that the petitioner shall be at liberty to file a regular bail by satisfying the riders of Section 37 NDPS Act. In case the petitioner cannot engage a counsel on his own, it shall be permissible for him to approach the concerned legal authority to assign an advocate to represent him. Any such application can be filed

either before the trial court or before this court as per the discretion of the petitioner.

The petition is allowed with observations and liberties mentioned above. All pending applications, if any, stand closed.

(ANOOP CHITKARA)
JUDGE

November 24, 2023
AK

Whether speaking/reasoned	:	Yes
Whether reportable	:	Yes