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

CRM-M-54603-2022

Date of decision : 31.01.2023

Balwinder Singh @ Billa

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Rishu Mahajan, Advocate
for the petitioner.

Mr. Inderpreet S. Kang, Asstt. Advocate General, Punjab.

PANKAJ JAIN, J. (ORAL)

This is second petition filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case FIR No.208 dated 17.12.2020 registered for the offences punishable under Section 21/23/29 of the NDPS Act, 1985 and Section 473 of IPC, at Police Station Gharinda, District Amritsar.

2. As per the allegations levelled in the FIR it was alleged that :-

“No.OPS/E/71 BN/2020/750 E COY 71 BN BSF BOP Rajatal Dated 17 Dec, 2020 To, The SHO Police Station Gharinda Amritsar (Punjab) Sub – To Lodge an FIR and handing over of seized items on 17 Dec 2020 at about 170210 Hrs 2nd Hit Party consisting of No 140705506, CT. Thakur Javan and No.11399378, CT Patil Sachin Hit No 07 of E Coy Rajatal 71 BN BSF Near BFL No 31-32 in the alignment of BP No 111/19-20 performing duty

and observed some suspicious movement ahead of BS Fence and also to BS Fence sensing threat of smuggling activities by PAK smuggler, CT Thakur Javan challenged smuggler and fired 09 RDS from his personal weapon towards smugglers to stop them from smuggling activities but smuggler escaped and ran away towards counterpart side taking advantage of dense fog during initial search of nearby area 02 pkts contraband (suspected to be heroin) were found behind the fence, REF BP No 111/19-20 and later on thorough search had been carried out and one more packet recovered ahead of fence by searching party in agro field adjacent to dangerous path approx. 10 mtr away from BS fence, No injury inflicted to our own troops during this incident seizure memo of seized items 03 pkts of contraband (suspected to be heroin) weighing approx 3.110 Kgs enclosed with FIR. Therefore it is requested that a FIR may please be lodged against unknown person and take necessary action A copy of FIR may be provided to this HQ for out further course of action Exact weight of heroin 3.110 Kg.

3. The allegations against the petitioner as per the prosecution have been further clearly spelled out in the order passed by the Special Court rejecting his bail wherein it has been noticed as under :-

“XXXXX

The case was registered by police on application received from Inspector Mahindra Singh, Coy. Commander, BSF regarding recovery of three packets of heroin i.e. one packet containing 1 kg 40 grams heroin, second packet containing 1 kg 40 grams heroin and third packet containing 1 kg 30 grams heron. During investigation, Jobanjit Singh son of Joginder Singh was apprehended. During his interrogation, he named Jaskaran Singh and on 16.12.2020, he also deposed that he alongwith Jaskaran Singh and Gopi went to international border and Jaskaran Singh called in Pakistan through his mobile phone. Thereafter, they heard

the noise of fire and they ran away. He further told that Sukhbir Singh alias Sukha alias Jagroop Singh son of Gurmeet Singh was to smuggle heroin from Pakistan, which was to be thrown over the wire by Pakistani smugglers and they have to pick up the same and handover to Chamkaur Singh.

Name of applicant-accused surfaced during investigation. In this case, 3 kg 110 grams heroin was recovered, which falls under commercial quantity and there is bar of Section 37 of NDPS in granting bail in case of commercial quantity. So, keeping in view the gravity of offence alleged to have been committed by the applicant-accused and seriousness of the allegations, it is not a fit case where concession of bail can be given to the applicant-accused. So, bail application is ordered to be dismissed. Bail application file be attached with main file.”

4. Counsel for the petitioner submits that the petitioner is in custody since 31st of October, 2021. Investigation already stands completed and report under Section 173 Cr.P.C. already stands filed. He further submits that the petitioner is not facing any other case for the offence punishable under the NDPS Act. It has been asserted that since there is no evidence against the petitioner and he has been nominated merely on the basis of disclosure statement alleged to have been suffered by a co-accused Jaskaran Singh, the petitioner would be entitled for grant of regular bail. Counsel for the petitioner also submits that keeping in view the fact that no recovery was made from the petitioner thus, rigors of Section 37 of the NDPS Act will not be attracted while considering his prayer for regular bail.

5. Yesterday while hearing the matter an argument was raised that

there are calls made to Pakistan which can be traced to the mobile-number of the petitioner and, thus, apart from disclosure statement made by a co-accused there is a cogent piece of evidence against the petitioner and, therefore, it would not be a case for grant of bail keeping in view the nature of allegations and the quantity of contraband involved.

6. Today, State Counsel on instructions from ASI Balwinder Singh very fairly submits that those calls are not relatable to mobile number of the petitioner.

7. In the circumstances without going into the merits of the case and keeping in view the incarceration already suffered by the petitioner and the dictum of law laid down in **Tofan Singh Vs. State of Tamil Nadu, (2021) 4 SCC 1**, coupled with the fact that apart from disclosure statement made by the co-accused there is no other piece of evidence against the petitioner, 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 Ld. Trial Court/Duty Magistrate concerned.

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

January 31, 2023
Dpr

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No