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

CRM-M-58220-2022(O&M)
Date of Decision: 20.01.2023

KANWALPREET SINGH ALIAS KANWAL

...Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Preetinder S.Ahluwalia, Advocate
for the petitioner.

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

HARSH BUNGER, J. (ORAL)

CRM-2912-2023

This is an application under Section 482 of the Code of Criminal Procedure, 1973, for placing on record the Inquiry Report (Annexure P-6) in case FIR No.28 dated 27.02.2017 as well as bail order dated 29.06.2020 (Annexure P-7) in case FIR No.47 dated 18.05.2020, respectively.

Criminal Misc. Application is allowed, as prayed for.
Annexures P-6 and P-7 are taken on record, subject to all just exceptions.

CRM-M-58220-2022

Prayer in the present petition filed under Section 439 of the Code of Criminal Procedure, 1973, is for grant of regular bail to the petitioner in case FIR No.188 dated 21.08.2022 (Annexure P-1), registered at Police Station Special Task Force, District STF Wing, for offence

punishable under Sections 21, 25 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (here-in-after referred to as 'the NDPS Act).

Brief facts of the case are that on 21.08.2022, an informer gave information to Deputy Superintendent of Police, STF, Border Range, Amritsar, that Garhgadjit Singh S/o Baldev Singh R/o Village Kotla Doom, Ramtirath Road, Police Station Raja Sansi, Amritsar and Kanwaljit Singh alias Kanwal S/o Gajjan Singh R/o Village Blaggan, Ramtirath Road, Police Station Raja Sansi, Amritsar, are together indulged in business of heroin smuggling and Garhgadjit Singh uses virtual number +1(386)3062911 in his phone to contact heroin smugglers and takes delivery of heroin and supplies further to customers. It was further informed that if the houses of aforesaid Garhgadjit Singh and Kanwaljit Singh are raided and search is conducted then a heavy quantity of heroin can be recovered from them.

On finding the said information reliable, a *ruqa* was prepared and the same was sent to the concerned Station House Officer, whereupon, the case FIR No.188 dated 21.08.2022 was registered.

On 03.09.2022, Deputy Superintendent of Police, Vavinder Kumar was present at Ram Tirath Road in connection with investigation of this case, where he received a secret information that real name of Kanwaljit Singh is Kanwalpreet Singh @ Kanwal and he is coming on his Innova car towards Amritsar side. Upon getting information, the Deputy Superintendent of Police laid a *naka* at bridge of Mahal and arrested accused Kanwalpreet Singh. On the asking of Kanwalpreet Singh, his co-accused Garhgadjit Singh was also arrested.

Thereafter, upon a disclosure statement of accused Garhgadjit Singh recorded on 05.09.2022, 01 kg. of *heroin* was recovered from his farm house situated at Village Kotla Doom and on the disclosure statement of accused Kanwalpreet Singh, 200 grams of *heroin* was recovered from his farm house.

The petitioner herein filed an application under Section 439 Cr.P.C. seeking regular bail before the Court of Additional Sessions Judge, Amritsar. However, the same was dismissed on 18.11.2022 by observing as under :-

“...On 5.9.2022, on the disclosure statement of accused Gargajjit Singh, 1 Kg. heroin was recovered from his farm house situated at Village Kotla doom and on the disclosure statement of accused Kanwalpreet Singh, 200 grams heroin was recovered from his farm house. More than, 250 grams of Heroin falls under the ambit of commercial quantity. Here in this case, the alleged recovery of 1 kg. 200 grams of heroin has been effected from the possession of the accused-applicant along with his co-accused which falls under the ambit of commercial quantity. As such, this Court is of the considered view that the accused-applicant is not entitled for bail...”

Learned counsel for the petitioner submitted that the petitioner has been falsely implicated in the present case and various provisions relating to search and seizure provided under the NDPS Act have been violated. He further submitted that the FIR was registered on 21.08.2022 on the basis of secret information. However, the petitioner was arrested on 03.09.2022 i.e. after a delay of 12 days from the date of registration of FIR i.e. 21.08.2022. While referring to recovery memos Annexures P-4 and P-5 in respect of the petitioner and Garhgadjit Singh, respectively; it is submitted

that on the basis of his alleged disclosure statement, *200 grams of heroin* was recovered from Behak/Dera of the petitioner and *1 kg. of heroin* was allegedly recovered from the farm house of co-accused Garhgadjit. It is submitted that both the aforesaid recoveries were from different places and at different times and accordingly, two separate recovery memos were prepared. Learned counsel submits that the alleged recovery of 200 grams of heroin from the petitioner is non-commercial quantity, however, his bail application was wrongly dismissed by the learned Additional Sessions Judge, Amritsar by clubbing the recovery allegedly made from the petitioner with the recovery made from the co-accused Garhgajit Singh and by holding that the total recovery was 1 kg and 200 grams, which was commercial. It is submitted that the question of adding the recovery from each of the arrested accused to make it a case of commercial quantity of recovery is against the settled proposition of law and he places reliance upon the judgment in ***CRM-M-53872-2021 (O&M)*** titled as ***Sukhdev Singh v. State of Punjab*** decided on ***27.04.2022***. He further contends that rigors of Section 37 of the NDPS Act shall not be applicable in the case of the petitioner as the recovery of 200 grams of heroin from the petitioner is not of commercial quantity. It is submitted that the petitioner is in custody since 03.09.2022 and nothing is to be recovered from him; hence, no useful purpose would be served by keeping him in custody any further. It is submitted that the petitioner is ready to abide by all conditions as imposed by this Court or by the trial Court, accordingly prayer for grant of regular bail has been made.

Learned counsel for the respondent-State has filed the custody certificate of the petitioner in the Court today and the same is taken on record, subject to all just exceptions.

Learned State counsel opposes the pleas raised by the counsel for the petitioner by stating that the petitioner does not deserve the concession of bail as he has been specially named in the FIR and on his statement, 200 grams of heroin was recovered from his Behak/Dera. It is further submitted that the petitioner is involved in three more cases, out of which, one case bearing FIR No.28 dated 27.02.2017, is registered at Police Station Ajnala under Section 22 of the NDPS Act and Section 25 of the Arms Act. He also submits that the recovery from each accused is to be clubbed to examine the total quantity recovered. While referring to the custody certificate, learned State counsel has not disputed the fact that the petitioner has been in custody for 04 months – 13 days (as on 19.01.2023).

I have heard learned counsel for the parties and have perused the paper book with their able assistance.

So far as the issue of clubbing of the recoveries made from different accused in the case is concerned, this Court in ***Sukhdev Singh's*** case (supra) held as under:-

*“ 3. The Counsel for the petitioner contends that the recovery effected from him was 1Kg 350 grams of Opium which was a non commercial quantity and recovery from his co-accused could not be clubbed to his recovery to make the total recovery that of commercial quantity. He relies on the judgment of this Court in ***Amit Dhanak vs. State of Haryana CRM-M-33684- 2020*** decided on 11.01.2021 to contend that when there is separate recovery from each accused of non commercial quantity then the recovery from each accused cannot be clubbed together so as to disentitle all the accused to the grant of bail. Relevant para of the order is reproduced as under:-*

“ Considering the facts; that in the FIR specific recovery has been attributed to all the three accused of 16Kgs of Ganja Patti each; they are in custody since August, 2020; no recovery is to be made; the individual recovery is of non commercial quantity and conclusion of trial would take time, both the petitions are allowed. The petitioners are ordered to be released on bail subject to their furnishing surety/bail bonds to the satisfaction of the learned trial Court/Duty Magistrate concerned. ”

So far as the involvement of the petitioner in one other case under the NDPS Act is concerned, learned counsel for the petitioner has referred to Annexure P-6 i.e. the Inquiry Report, wherein, the petitioner has been found “innocent” and in other two FIRs i.e. FIR No.38 dated 21.04.2022 and FIR No.47 dated 18.05.2020, it is stated that the petitioner has been released on bail and the said fact is not refuted by the learned State counsel.

In the present case, the alleged recovery from the petitioner as per recovery memo (Annexure P-4) is of 200 gms. of heroin, which is non-commercial quantity and, therefore, the rigors of Section 37 of the NDPS Act shall not be applicable to the present case. Even otherwise, the petitioner is in custody since 03.09.2022.

Keeping in view the afore-mentioned facts and circumstances, the instant petition is allowed and the petitioner is ordered to be released on regular bail subject to his furnishing heavy bail/surety bonds to the satisfaction of the Illaqa Magistrate/Duty Magistrate concerned. However, at the time of his 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 would also furnish an undertaking to the effect that he will not indulge in any illegal activity in relation to drugs and intoxicants. The petitioner shall appear before the police station concerned on first Monday of every month till conclusion of the trial.

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.

The petition is accordingly disposed of.

January 20, 2023
gurpreet

(HARSH BUNGER)
JUDGE

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