

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Sr. No.219

CRM-M-59634-2022

Date of decision: 03.05.2023

Jaswinder Singh

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. J.S. Sandhu, Advocate
for the petitioner.

Mr. A.P.S. Tung, DAG, Punjab.

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DEEPAK SIBAL, J. (Oral)

1. The present petition has been filed under Section 439 Cr.P.C. for the grant of regular bail in FIR No.212 dated 29.12.2020 registered under Sections 21, 29 and 25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short – the NDPS Act) at Police Station Mamdot, District Ferozepur.

2. Briefly stated, the case of the prosecution is that on 29.12.2020, a police party received information from an officer of the BSF that heroin had been recovered from a field abutting the India - Pakistan border; on receipt of the afore information the police party reached the spot where information was given to the police party in writing by the officers of the BSF that on 29.12.2020, at about 8.00 a.m., two officers of the BSF were patrolling the border when they noticed two persons on a motorcycle throwing something in the field; on being asked to stop by the BSF

personnel, the said two persons, after leaving their motorcycle, successfully fled the spot towards village Hazara Singh Wala; on search of the area BSF personnel found two packets wrapped in yellow polythene and a Hero Honda Deluxe motorcycle bearing registration No.PB-05-AK/6961 which had been left behind by the aforesaid two persons; on the basis of the afore report received by the police from the BSF personnel, the FIR in question was registered and the matter was investigated during the course of which it was found that the motorcycle was owned by co-accused Gulzar Singh and that co-accused Sukhdev Singh @ Sukha was suspected to be one of the two persons on the motorcycle; Sukhdev Singh @ Sukha was then arrested; Sukhdev Singh @ Sukha was later identified by the BSF personnel to be one of the persons on the motorcycle; the seized packets were found to contain 1 kg 10 grams of heroin and that on the basis of co-accused Sukhdev Singh @ Sukha's disclosure statement the petitioner was also nominated as an accused.

3. Learned counsel for the petitioner contends that the petitioner has been falsely implicated in this case only for the reason that he is the real brother of Sukhdev Singh who has allegedly been identified by the BSF personnel to be one of the persons on the motorcycle indulging in drug trafficking; the petitioner is in custody since 06.10.2022; the petitioner has no other criminal antecedents; investigation in the case is complete and therefore, the petitioner is not in a position to influence the same; co-accused Sukhdev Singh and Gulzar Singh have been granted regular bail by this Court; there is no evidence with the State to connect the petitioner with the crime he is accused of; there is no disclosure statement of co-accused

Sukhdev Singh @ Sukha implicating the petitioner; no recovery of any narcotics/drugs has been made from the petitioner's person and that the petitioner's trial, as and when it begins, will take a long time to conclude.

4. Learned State counsel does not dispute the fact that co-accused Sukhdev Singh and Gulzar Singh have been granted regular bail by this Court and that there is no separate statement of co-accused Sukhdev Singh @ Sukha with regard to the petitioner's involvement as also that no identification parade was got conducted to identify the petitioner but opposes the grant of bail to the petitioner on the ground that there is a specific zimni report in the police file which records the petitioner's involvement in the crime in question at the behest of co-accused Sukhdev Singh @ Sukha and that in case the petitioner is released on bail he is likely to either flee from justice and/or commit similar offences.

5. Learned counsel for the parties have been heard and with their able assistance the record of the case has also been perused.

6. Whether in the absence of any identification parade conducted by the State to identify as to whether it was the petitioner who was on the motorcycle at the time of the alleged drug trafficking would be debated during the course of the petitioner's trial especially when admittedly there is also no recorded statement of co-accused Sukhdev Singh @ Sukha with regard to the petitioner's involvement in the crime he is accused of.

7. Nonetheless, it is not disputed that co-accused Sukhdev Singh who was allegedly identified by the BSF personnel to be one of the persons on the motorcycle which was used in the trafficking of drugs has been granted regular bail by a Coordinate Bench of this Court; investigation in

the case is complete; the petitioner has no other criminal case pending against him; the alleged recovery of drugs was from the fields and not from the petitioner's person and that the petitioner's trial, as and when it begins, is likely to take a long time to conclude.

8. Keeping in view the totality of the above facts, the present case is considered to be a fit one in which the petitioner be directed to be released on regular bail. Resultantly, subject to the satisfaction of the CJM/Duty Magistrate, Ferozepur, the petitioner is directed to be released on bail.

9. It is clarified that the above observations have been made only for the limited purpose of deciding the present regular bail application and the same would not be construed to be an expression of opinion on the merits of the case.

May 03, 2023
Jyoti 1

(DEEPAK SIBAL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No