

2023:PHHC:165251

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

209

CRM-M-64022-2023

Date of decision : 22.12.2023

Rajwinder Singh @ Happy

..... Petitioner

versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Jashandeep Singh Sandhu, Advocate
for the petitioner.

Mr. Jaswinder Singh Arora, DAG, Punjab
with ASI Gurkanwaljeet Kaur.

PANKAJ JAIN, J. (Oral)

1. Present petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case bearing FIR No.03 dated 15.01.2022, registered for the offences punishable under Section 21 of NDPS Act, 1985 (Section 29 of NDPS Act, 1985 added later on), at Police Station Lakho Ke Behram, District Ferozepur.

2. As per the case of prosecution, a Honda City car was stopped on 15.01.2022 by police party. There were 04 occupants. Two of them namely Rajpreet Singh and Loveveer Singh @ Love were apprehended and the other two fled away from the spot. The said persons threw two polythene bags. From the said polythene bags, 250 gm of heroin each was recovered. As per the disclosure made by these persons i.e. Rajpreet Singh and Loveveer Singh @ Love who were apprehend on the spot, the two persons who succeeded in fleeing away

2023:PHHC:165251

were Rajwinder Singh @ Happy-the present petitioner and Jagdish Singh @ Deesha. Jagdish Singh @ Deesha stands admitted to bail vide order dated 15.12.2023. Rajpreet Singh and Loveveer Singh @ Love, who were apprehended from the spot, too stand admitted to bail vide order dated 04.08.2023, observing as under:-

“Present petitions have been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioners in case bearing FIR No.03, dated 15.01.2022 registered under Section 21 of NDPS Act (later on added Section 29 of NDPS Act) at Police Station, Lakho Ke Behram, District Ferozepur.

2. As per the case of prosecution, on receiving the secret information regarding the petitioners indulging in sale of narcotic and psychotropic substances and going in car bearing no.DL3C-AK-08145 for supplying the same, barricading was raised. On seeing the police party the petitioners along with their accomplice threw two polythene bags from their pockets and tried to run. In the process, petitioners were apprehended and total 500 grams of heroin i.e. 250 grams from each of the petitioner was recovered.

3. Learned counsel for the petitioners submits that in fact the police is not sure of the story being put forth, in the reply filed by way of affidavit of Sh.Yadwinder Singh Bajwa, D.S.P., Sub Division, Guruaharsahai, District Ferozepur, the specific case of the police is as under:-

“However, on seeing the police party, present petitioner Rajpreet Singh, Loveveer Singh, Rajwinder Singh @ Happy have thrown the polythene bags carried by them in

2023:PHHC:165251

their hands containing heroin while coming from the car and they tried to fled away from the spot. However, with the efforts of police party, present petitioner and Loveveer Singh apprehended at the spot whereas two other persons succeeded in fleeing away from the spot. The polythene bags lying on the earth were checked and from both the bags 250 grams heroin each i.e. In all 500 gram heroin was recovered. Thus the present case u/s 21/61/85 of NDPS Act has been registered.”

4. Whereas, in the report filed under Section 173(2) Cr.P.C the police is specifically claiming that there were four persons travelling in the car. Apart from that it has been contended that even if the allegations are taken to be on their face value, the investigating agencies are not sure as to who was in possession of the contraband in the pocket and threw the same. Petitioners are in custody since 15.1.2022. Investigation already stands concluded and challan stands presented. He submits that keeping in view the fact that contraband recovered was 250 grams each from the pockets of both the petitioners is just equivalent to the commercial quantity and the same may fall below the same in case human error in weighing and weight of polythene is factored in rigors of Section 37 of NDPS Act would not be attracted.

6. Per contra, learned State counsel submits that the petitioner Loveveer Singh has criminal antecedents and is facing two more prosecutions in FIR No.53 dated 24.5.2021 registered under sections 452, 323, 34 IPC at P.S. Kulgari and FIR

2023:PHHC:165251

No.64 dated 7.5.2020 registered under sections 307, 324, 341, 506, 148, 149 IPC at P.S. Kulgari. Likewise petitioner Rajpreet Singh is facing another prosecution under the N.D.P.S Act.

6. Faced with such situation, learned counsel for the petitioners rely upon the judicial precedent in case of ***Prabhakar Tiwari Vs. State of U.P and another, 2020(11) SCC 648*** and ***Maulana Mohd. Amri Rashadi Vs. State of U.P., 2012(2) SCC 382*** to contend that the fact of the petitioner being involved in the other cases cannot be a sole ground to decline the bail to the petitioner, the present petitions are allowed. Without commenting on the merits of the case, the petitioners are ordered to be released on regular bail on their furnishing bail/surety bonds to the satisfaction of the Ld. Trial Court/Duty Magistrate, concerned. However, in addition to conditions that may be imposed by the Trial Court/Duty Magistrate concerned, the petitioner shall remain bound by the following conditions :-

- (i) The petitioners shall not misuse the liberty granted.
- (ii) The petitioners shall not tamper with any evidence oral or documentary during the trial.
- (iii) The petitioners shall not absent themselves on any date before the trial.
- (iv) The petitioners shall not commit any offence similar to the one alleged in the present case.
- (v) The petitioners shall deposit their passport, if any with the trial Court.
- (vi) The petitioners shall give their cellphone numbers to the police authorities and shall not change their cell-phone numbers without

2023:PHHC:165251

permission of the trial Court.

(vii) The petitioners shall not in any manner try to delay the trial

7. In case of breach of any of the aforesaid conditions and those which may be imposed by the Trial Court, the prosecution shall be at liberty to move cancellation of bail of the petitioner.

8. Ordered accordingly.

9. A photocopy of this order be placed on the connected case file.”

3. Petitioner is behind bars since 27.09.2023. Investigation vis-a-vis Rajpreet Singh and Loveveer Singh @ Love already stands concluded qua them and challan stands presented. The petitioner is admittedly not involved in any other case under NDPS Act.

4. Granting parity, the present petition is allowed. Petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the Ld. Trial Court/Duty Magistrate, concerned. However, in addition to conditions that may be imposed by the Trial Court/Duty Magistrate concerned, the petitioner shall remain bound by the following conditions :-

- (i) The petitioner shall not mis-use the liberty granted.
- (ii) The petitioner shall not tamper with any evidence oral or documentary during the trial.
- (iii) The petitioner shall not absent himself on any date before the trial.
- (iv) The petitioner shall not commit any offence while on bail.
- (v) The petitioner shall deposit his passport, if any with the trial Court.
- (vi) The petitioner shall give his cellphone number

2023:PHHC:165251

to the police authorities and shall not change his cell-phone number without permission of the trial Court.

(vii) The petitioner shall not in any manner try to delay the trial.

5. In case of breach of any of the aforesaid conditions and those which may be imposed by the Trial Court, the prosecution shall be at liberty to move cancellation of bail of the petitioner.

6. Ordered accordingly.

(PANKAJ JAIN)
JUDGE

22.12.2023
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No