

In The High Court for the States of Punjab and Haryana
At Chandigarh

CRM-M-691-2024 (O&M)
Date of Decision:- 15.01.2024

Deepak @ Gutriwala ... Petitioner

Versus

State of Punjab ... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Kamaldip Singh Sidhu, Advocate, for the petitioner.
Mr. Hakam Singh, AAG, Punjab.

FIR NO.	DATE	POLICE STATION	OFFENCES
149	04.05.2022	City Faridkot, District Faridkot	21(C) and 29 of NDPS Act (charges framed u/s 22(C), 22(b), 27-B, 29 of NDPS Act)

GURVINDER SINGH GILL, J. (Oral)

1. The instant petition has been filed on behalf of the petitioner seeking grant of regular bail in respect of aforementioned FIR.
2. As per the case of prosecution, on 4.5.2022, a secret information was received by the police at about 01.00 am (early morning) to the effect that Shivam, Ravi, Deepak alias Gutriwala, Baljeet Singh, Heera Singh, Amritpal Singh @ Jinda and Pardeep Kumar @ Bablu indluded in sale of intoxicant substances. ASI Harcharan Singh was

able to apprehend the said 7 persons with the help of his companions. One of the said 7 persons threw a transparent polythene bag on the ground which could be seen with the lights of the vehicle. The said polythene bag was found to contain 300 grams of 'Heroin'. Upon personal search, some amount was also recovered from the accused.

3. Learned counsel for the petitioner submits that as many as 7 persons have been roped in on the basis of allegation of recovery of 300 grams of 'Heroin' whereas none of the said seven accused can be said to be in possession of the said contraband as it was not recovered from anybody's physical possession.
4. It has further been submitted that the falsity of the case of prosecution would be evident from the fact that an absolutely identically situated co-accused namely Shivam who is also named in the FIR and is alleged to have been arrested with the petitioner and co-accused was given a clean chit on the very next date i.e. on 5.5.2022. Learned counsel in this regard has drawn the attention of this Court to the DDR (Annexure P-10).
5. Opposing the petition, learned State counsel submitted that since the petitioner along with co-accused was caught red-handed while all of them were found in collective possession of 300 grams of 'Heroin', the complicity of the petitioner is clearly evident. It has further been submitted that the petitioner stands involved in one more case under NDPS Act i.e. FIR No. 162, dated 14.7.2019, Police Station City Faridkot, under Sections 21/27/61/85 of NDPS Act, which according to the petitioner pertains to recovery of 5 grams of 'Heroin'. Learned

State counsel has passed on custody certificate indicating that the petitioner as on date has been behind bars since the last about 1 year, 8 months and 12 days. It has also been informed that as on date none out of the cited 22 PWs has been examined.

6. This Court has considered the rival submissions.
7. While the allegations are very specific in the FIR and all the seven persons have been named therein, but the possession of the contraband is not specifically attributed to any of the seven accused and the polythene bag is stated to have been thrown on the ground by one of the accused. It would be debatable as to whether the petitioner can be said to be in conscious possession of the said contraband.
8. Still further, this Court finds that the police on the very next day gave a clean chit to co-accused Shivam who was absolutely identically situated and had been arrested along with the petitioner and other co-accused under similar circumstances. A perusal of DDR (Annexure P-10) pertaining to his innocence does not disclose any convincing reasons and simply records that upon inquiries made from co-accused as well as other secret and open inquiry, the said Shivam had been found to be innocent. The petitioner is also situated identically. As such, under the given circumstances the petitioner can be extended the benefit of bail particularly bearing in mind that conclusion of trial is likely to consume time inasmuch none out of cited 22 PWs has been examined till date. In these circumstances, further detention of the petitioner is not justified. The petition, as such, is accepted and the petitioner is ordered to be released on bail subject to his

furnishing bail bonds to the satisfaction of learned trial Court/Chief
Judicial Magistrate/Duty Magistrate concerned.

15.01.2024
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(GURVINDER SINGH GILL)
JUDGE

Whether speaking /reasoned	Yes / No
Whether Reportable	Yes / No