



**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRM-M-8698-2024

Date of Decision:-25.07.2024

Jugraj Singh @ Jaggu.

.....Petitioner.

Versus

State of Punjab.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Karan Chaudhary, Advocate for the Petitioner.

Mr. Harkanwar Jeet Singh, AAG Punjab.

JASJIT SINGH BEDI, J. (ORAL)

The prayer in this petition under Section 439 Cr.PC is for the grant of regular bail in FIR No.0146 dated 01.09.2023 under Sections 21, 25, 29, 61, 85 of the NDPS Act, registered at Police Station Kamboj District Amritsar, Punjab.

2. The brief facts of the case are that the petitioner-Jugraj Singh @ Jaggu being the driver of the motor cycle and Malkeet Singh @ Ganju being the pillion rider on the motor cycle were apprehended on the basis of secret information. The recovery of 300 grams of Heroin came to be effected from Malkeet Singh @ Ganju.

3. The Counsel for the petitioner contends that as the recovery was effected from the pillion rider the petitioner could not be said to be in conscious possession of the contraband and, therefore, he was entitled to the



concession of bail. Reliance is place on the judgments of this Court in ***Saroj Vs. State of Haryana CRM-M-34181-2023 Decided on 30.01.2024*** and ***Ravinder Singh @ Binder Vs. State of Punjab CRM-18537-2022 in/& CRM-M-19948-2022 Decided on 30.05.2022.***

4. The Counsel for the State on the other hand contends that both the petitioner and his co-accused were travelling together on the same motor cycle. It was unlikely that the petitioner was unaware of the bag carried by Malkeet Singh @ Ganju, the pillion rider. Therefore, the petitioner was not entitled to the concession of bail.

5. I have heard counsel for the parties.

6. This Court in ***Saroj's case (supra)*** held as under:-

“ 3. The learned counsel for the petitioner contends that only 100 grams of heroin had been recovered from the petitioner which was less than the commercial quantity. The recovery from the co-accused Sushil could not be added to the recovery from the petitioner as in each case the recovery was effected from polythene/bag being separately carried by the accused. As the petitioner was a lady, a first-time offender and in custody since 31.03.2023, she was entitled to the concession of bail as none of the 15 prosecution witnesses had been examined so far thereby delaying the conclusion of the Trial.

4. A status report dated 26.01.2024 by way of an affidavit of Ashok Kumar, HPS, Deputy Superintendent of Police, Hisar-I, Hisar has been filed on behalf of the State by the learned counsel for the State. The same is taken on record. He contends that the petitioner and her co-accused were travelling on the same motorcycle. From the petitioner, the recovery of 100 grams of heroin had been effected and from her co-accused 400 grams. The total recovery effected was 500 grams of heroin which fell into the commercial quantity category. Therefore, she was not entitled to the concession of bail. He, however, concedes that the petitioner was a first-time offender, in custody since 31.03.2023 and that none of the 15 prosecution witnesses had been examined so far.

5. I have heard the learned counsel for the parties.

6. Admittedly, the recovery from the petitioner and her co-



accused was from the bags separately carried by them. Whether the recoveries could be clubbed together shall be adjudicated upon during the course of the Trial. However, at this stage, as the recovery from the petitioner is of 100 grams of heroin which is a non-commercial quantity, she is in custody since 31.03.2023 and none of the 15 prosecution witnesses have been examined so far, the Trial of the present case is not likely to be concluded anytime soon. In this situation, the further incarceration of the petitioner is not required.”

7. This Court in **Ravinder Singh @ Binder’s case (supra)** held as under:-

“ 2. The allegations in the FIR are that the police party was on patrolling duty when near the area of village Gaunsla two Hindu youth were seen coming on a motor-cycle from the front and on seeing the police vehicle became perplexed and were about to turn the motor-cycle around, when all of sudden, the motor-cycle driver threw the polythene bag kept on the tank of his motor-cycle on the right side at the Kuccha place of grass. The two youths were apprehended and the motorcycle driver disclosed his name as Gurpreet Singh @ Kala son of Sukhvir Singh and the pillion rider as Ravinder Singh @ Binder son of Kulwant Singh (the present petitioner). From the green coloured bag thrown away by Gurpreet Singh @ Kala, trips of intoxicating tablets were recovered.

3. The learned counsel for the petitioner submits that he was a pillion rider and cannot be said to be in a conscious possession of the contraband. Reliance is placed on the judgments in Prahlaad Singh Versus State of Haryana, (2020) 2 RCR (Criminal) 597, Jorawar Singh Versus State of Punjab, CRM-M-23804-2020 decided on 16.08.2021 and Nirbhay Singh Versus State of Punjab, CRM-M-48617-2018 decided on 13.11.2018 to contend that when the recovery is being affected from one of the accused riding a two wheeler then the other accused cannot be held to be liable as he cannot be said to be in conscious possession at least for the purposes of the decision of the bail application.

4. On the other hand, the learned State counsel contends that the contraband was thrown away by the driver of the motor-cycle



namely Gurpreet Singh @ Kala and it cannot be said that the petitioner who was a pillion rider was unaware of the contents of the bag. Thus, the petitioner does not deserve the concession of regular bail.

5. I have heard the rival contentions of both the parties.

In the case of Prahlad Singh's case (supra), the bag was in possession of the pillion rider and the driver of the motorcycle was granted the concession of bail.

In the case of Jorawar Singh's case (supra), the petitioner who was a pillion rider was granted the concession of bail, though the driver-Jagsir Singh had also been granted bail.

In the case of Nirbhay Singh's case (supra), the petitioner was driving the motorcycle was granted bail when the recovery was effected from the co-accused Hira Singh, who was a pillion rider and holding a plastic bag.

6. Coming back to the facts of the present case, as has already been mentioned hereinabove, the bag which was thrown away was in the possession of the driver of the motorcycle and it would be a matter of adjudication during trial as to whether the petitioner was in concession possession of the same or not.

7. In view of the above, as also the fact that the petitioner is not an accused in any other FIR, without adverting to the merits of the case, I deem it appropriate to enlarge the petitioner on regular bail.

8. Accordingly, the present petition is allowed. The petitioner is ordered to be released on bail in case FIR No.72 dated 18.09.2021 registered under Sections 22 and 27 of Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Singh Bhagwantpura, District Rupnagar (Annexure P-1) subject to his furnishing adequate bail bonds/surety bonds to the satisfaction of the trial Court/concerned Duty Magistrate.”

8. In the instant case, admittedly, the recovery was from the pillion rider Malkeet Singh @ Ganju. Whether the petitioner could be said to be in conscious possession of the same would be adjudicated upon during the course of the Trial. He is stated to be in custody since 01.09.2023 but none of the 15 Pws have been examined so far. Further he is a first time offender.



In this situation a *prima facie* satisfaction under Section 37 can be recorded to the effect that the petitioner has not committed the offence and is not likely to commit one in future.

9. Thus, without commenting upon the merits of the case, the present petition is allowed and the petitioner, namely, **Jugraj Singh @ Jaggu** son of Sh. Mangal Singh is ordered to be released on bail to the satisfaction of the Trial Court/Duty Magistrate concerned.

10. The petitioner shall appear on the first Monday of every month before the local police station till the conclusion of the trial and furnish an affidavit each time that he is not involved in any crime other than the present case.

11. In addition, the petitioner (or anyone else on his behalf) shall prepare an FDR in the sum of Rs.1,00,000/- and deposit the same with the Trial Court. The same would be liable to be forfeited as per law in case of the absence of the petitioner from Trial without sufficient cause.

12. The petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

July 25, 2024
Vinay

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