



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

221

CRM-M-24052-2024

Date of Decision :03.12.2024

AMANDEEP SINGH @ AMAN @ AMANDEEP SAINI

.....Petitioner

VERSUS

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. L.M.Gulati, Advocate
for the petitioner.

Ms. Manjot Kaur, AAG, Punjab.

KULDEEP TIWARI, J.(Oral)

1. Through the instant petition, the petitioner craves for indulgence of this Court for his being enlarged on regular bail, in case FIR No.0113, dated 26.10.2023, under Sections 21(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') (Sections 29/61/85 thereof added later on), registered at Police Station Valtoha, District Tarn Taran.

2. The case as set up by the prosecution, through the instant FIR, the relevant thereof is extracted hereinafter:-

“To the Head Munshi, Police Station Valtoha. Today I INSP/SHO alongwith ASI Gajjan Singh 1674/TT, ASI Gurbal Singh 1595/TT, PHG Harsukhmanjit Singh 4528 alongwith Laptop, Investigation Bag, in Government Vehicle Balero No.PB-65-BF- 1065 which was being driven by S/CT Sandeep Singh 69/TT and were going to Valtoha, Amarkot, Dibipura etc. area of police station etc. in connection with patrolling and in searching for bad elements. When a secret informer came present and informed that Amandeep Singh

alias Aman son of Vijay Kumar son of Mohanlal resident of Amarkot is indulged in the business of selling drugs. Who is riding on his motorcycle Hero Splader color black villages of since morning in the Dibipura, Wada Telia, Chhanna Sarja Mirja etc. and is selling drugs. If the barricading is done at the bridge of Sua Bahad (Algo Havelia) on the way to village Dibbipura and Valtoha and checked, then Amandeep Singh alias Aman can be caught with the drugs. On I INSP/SHO after understanding the description of said person was relieved and I along with my fellow officials, conducted barricading at the bridge of Bridge Sua, after reaching there. It was around 5.35 PM, that a young man was seen coming from Valtoha side of the village on a motorcycle Splendor. Who after seeing the police party in uniform stopped his motorcycle, the man holding the black envelope in his left hand threw the black envelope in the bushes on the left side of the road and turned the motorcycle around and tried to run. Who was overpowered with the help of fellow officials and asked his name and address. Who disclosed his name as Amandeep Singh @ Aman son of Vijay Kumar son of Mohan Lal, resident of Amarkot, Police Station Valtoha, District Taran Taran. Who was enquired into about the weighty envelope which he had thrown as what was in it. He told that it contained heroin. On which the said envelope which he had thrown, was taken up through him. Before checking the said envelop an attempt was made to involve some public witness but no public witness could join the police party. Whereupon I INSP/SHO in the presence of fellow officials opened and checked the polythene envelop thrown by the accused Amandeep Singh alias Aman son of Vijay Kumar son of Mohan Lal, resident of Amarkot, in which heroin was recovered. In order to weight the heroin, I INSP/SHO took out an electronic weighing machine and weighed it with the help of the electronic weighing machine and on weighing it was found to be 255 grams of heroin, which was put in the same plastic envelope and put in a plastic box and a Parcel was prepared and the parcel was sealed by me INSP/SHO with the seal in the of GS name and the sample seal was separately prepared. Seal after use was handed over to ASI Gajjan Singh No.6174/TT. Sealed Parcel of heroin, sample seal were taken into police possession through separate recovery memo. The motorcycle make Hero Splendor Color Black No.PB-02-BM-8206 was taken into possession by the police through separate recovery memo. Since the accused Amandeep Singh alias Aman above said by keeping in his possession 255 grams of heroin has committed an offence under section 21-C/61/85 of NDPS Act. On which ruga is being written against the accused Amandeep Singh alias Aman son of Vijay Kumar son of Mohanlal resident of Amarkot and is being sent to police station through PHG Harsukhmanjit Singh 4528 to register registration of a case. After the case, the case number be informed, the control room should be informed and a special report should be issued and the sent to the services of Magistrate Sahib and Senior Officers.....”

3. In asking for the relief (*supra*), learned counsel for the

petitioner submits the petitioner has suffered incarceration of more than 1 year and 1 month, as on today. Though he is stated to be involved in one other case under the NDPS Act, but that case was registered, while the petitioner being in jail, alleging therein, for carrying 01 gram of heroin, which is a very small quantity.

4. He further submits that this fact although not admitted, but may reflect that the petitioner is a drug addict.

5. He also submits that the recovery, as alleged to be effected from the present petitioner in the present case is of 255 grams of heroin.

6. He, in addition, submits that the trial has not moved an inch further since the last one year, as no witness has been examined so far by the prosecution, out of the total 12 cited in the final report, therefore, further custody of the present petitioner is not warranted.

7. *Per contra*, the learned State counsel vociferously opposed the asked for relief of grant of regular bail to the petitioner, and has filed a status report dated 01.12.2024, by way of an affidavit of Sh.Preetinder Singh, DSP, Sub-Division Valtoha, Camp at Bhikhiwind, District Tarn Taran, today in court, which is taken on record.

8. She further submits that the recovery effected from the present petitioner in the instant case, falls within the ambit of commercial quantity, as per the schedule attached to the NDPS Act, therefore, the vigor of Section 37 of the NDPS Act, would come in operation and the present petitioner does not satisfy such condition, he being involved in

one other case under the NDPS Act.

9. She has also placed on record a custody certificate *qua* the petitioner, which is taken on record, and a perusal of the same reveals that the petitioner has suffered incarceration of 01 year 01 month and 05 days as on today.

10. He further submits, on instructions imparted to her by the police official concerned, that in the instant case final report was filed on dated 01.03.2024, and charges were framed on dated 15.03.2024, and out of the total 12 witnesses as cited by the prosecution, none has been examined till date.

11. This Court has considered the rival submissions made by learned counsel for the parties concerned, and has gone through the entire case file, and is of the considered opinion that the instant petition is amenable for being **allowed**.

12. The reason for forming the above inference emanates from the factum that:

- (i) The recovery effected from the present petitioner is only 5 grams over and above the commercial quantity;**
- (ii) the petitioner has suffered incarceration of 01 years 01 months and 05 days, as on today;**
- (iii) out of the total 12 prosecution witness, none has been examined till date;**
- (vi) no fruitful purpose would be served by keeping the**

petitioner behind the bars;

(v) trial is not likely to conclude anytime soon;

13. The above view of this Court is fortified by the ratio of the judgment laid down in "**Rabi Prakash Versus The State of Odisha**", **Special Leave to Appeal (Criminal) No.4169 of 2023**, wherein the Supreme Court has discussed the effect of Section 37 of the NDPS Act in such like cases of long custody. The relevant portion of the aforesaid judgment contained in para No.4 is reproduced as under:-

"4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent - State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act."

14. Considering the hereinabove made discussion, this Court deems it fit and appropriate to grant the concession of regular bail to the petitioner. Therefore, without commenting upon the merits and circumstances of the present case, the present petition is **allowed**. The petitioner is ordered to be released on bail on furnishing of bail bond and surety bond to the satisfaction of concerned Chief Judicial Magistrate/trial Court/Duty Magistrate.

15. However, anything observed here-in-above shall have no effect on the merits of the trial, and is only meant for deciding the present petition.

16. However, it is clarified that if in future, the petitioner is found indulging in commission of similar offences, as is involved herein, the respondent-State shall be at liberty to make an appropriate application seeking cancellation of regular bail, as granted by this Court.

17. All pending application(s), if any, also stand **disposed** of accordingly.

December 03, 2024
dharamvir

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned. : Yes/No
Whether Reportable. : Yes/No