

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

CRM-M-26288-2023 (O&M)
Date of Decision:-30.1.2024

Robin Singh ... Petitioner

Versus

State of Punjab ... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Amit Arora, Advocate, for the petitioner.

Mr. Sanish Girdhar, AAG, Punjab.

GURVINDER SINGH GILL, J.(Oral)

1. The instant petition has been filed challenging order dated 18.3.2023 (Annexure P-3) passed by learned Judge, Special Court, Tarn Taran, vide which an application filed by the petitioner for release of his two mobile phones on 'superdari', which had been taken into possession during the course of investigation, has been dismissed.
2. The petitioner is facing trial in respect of an FIR i.e. FIR No.0036, dated 4.4.2021 registered at Police Station Sadar Patti, District Tarn Taran, under Sections 21(c) and 25 of Narcotic Drugs and Psychotropic Substances Act, 1985, wherein offences under Sections 29 and 27-A of NDPS Act were added later on, which is still pending. It is the case of the prosecution that 3

kilograms of 'heroin' was recovered from Nishan Singh and another 500 grams of 'heroin' was recovered from Bikramjit Singh. It is further the case of prosecution that Nishan Singh had disclosed that they had actually procured 4½ kilograms of 'heroin' from the petitioner Robin Singh, Satnam Singh, Anthony @ Manohar Lal and Lovejeet Singh @ Labha.

3. It is further the case of prosecution that when the petitioner was apprehended by the police, he was found in possession of 2 mobile phones, which were taken into possession. During the course of trial, the petitioner moved an application for release of the aforesaid mobile phones on 'superdari', which was declined vide impugned order dated 18.3.2023 (Annexure P-3). The relevant extract from the impugned order is reproduced hereinunder:

“I have considered the contentions raised by both the sides. In view of the investigation conducted and the report of police station, these mobile phones are said to be the outcome of drug money which have been recovered from the applicant who actually supplied 4½ kilograms of heroin to his co-accused who were arrested along with 3½ kilograms of heroin. During or after the conclusion of trial applicant can prove these mobiles are have been purchased with self earned money. At this stage nothing can be commented upon the same and in the event of its proof of being purchased from the proceeds of drug money the same are liable to be confiscated. At this stage these mobile phones cannot be handed over to the applicant. Application as such, without merits and the same is dismissed. Papers of this application be attached with the main papers.”

4. Learned counsel for the petitioner submitted that the trial is still pending and there is no finding as regards the guilt of the petitioner and that under these circumstances it cannot be said that the said mobile phones had been purchased out of the drug money.

5. On the other hand, learned State counsel submitted that having regard to the fact that huge quantity of '*heroin*' had been recovered from the co-accused, who had named the petitioner, the complicity of the petitioner is clearly established. It has further been submitted that the very fact that the petitioner was found in possession of two expensive mobile phones goes a long way to show that he was into drug trafficking and that the same had been purchased out of the proceeds of sale of drugs.
6. This Court has considered the rival submissions addressed before this Court.
7. It is not in dispute that the petitioner was never arrested at the spot and came to be nominated on the basis of a disclosure statement. It is also not in dispute that no contraband was recovered from the petitioner when he was apprehended. Under these circumstances, the involvement of the petitioner would be debatable and it would be subject to convincing evidence, if any, is led by the prosecution. There is nothing on record to show that the said mobile phones had been used for commission of offence. As such, the said mobile phones not strictly being the case property are not required to be retained. Still further in case the said mobile phones are not released, the same may become obsolete with the passage of time and would be of no use to the petitioner.
8. Having regard to the totality of facts and circumstances of the case, the instant petition is accepted and the impugned order dated 18.3.2023 (Annexure P-3) passed by learned Judge, Special Court, Tarn Taran is hereby set aside. The two mobile phones taken into possession by the police during the course of investigation are ordered to be released to the petitioner on

‘superdari’ subject to any condition as may be imposed by the Court concerned.

9. Needless to mention, in case it is ultimately established that the petitioner had committed the offences in question, it shall be open to the prosecution to move appropriate application for confiscation of the said mobile phones.

30.1.2024

pankaj

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned Yes / No

Whether Reportable Yes / No