

CRM-M-47307-2023

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2024:PHHC:020570

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

CRM-M-47307-2023
Date of decision : 14.02.2024

SHAMSHER SINGH @ SHERA

....Petitioner

Versus

UNION OF INDIA AND ANOTHER

....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Ankur Jain, Advocate for the petitioner.

**Mr. Sourabh Goel, Advocate,
Mr. Tej Bhahadur, Advocate and
Ms. Gitika Sharma, Advocate
for respondent No.1-NCB.**

Mr. R.S. Bhatta, DAG, Punjab for respondent No.2.

PANKAJ JAIN, J. (ORAL)

This petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in NCB Crime No.82 dated 26.12.2021 registered for the offences punishable under Sections 8, 18, 21, 23, 28, 29 and 30 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act') at Police Station Khemkaran, District Tarn Taran.

2. The case of the prosecution as per the complaint filed before the Special Judge, Tarn Taran is that on 26.12.2021 information was received from concerned Commandant BSF with respect to recovery of 22 packets of suspected narcotics substance in the area of their responsibility which they were willing to hand over to the NCB for further legal

proceedings. It is being claimed that a secret information was received by the concerned I.O. from reliable source on 13.02.2022 that Shamsheer Singh @ Shera s/o Sukhwant Singh, Sarbjeet Singh @ Sabba s/o Balveer Singh i.e. present petitioner and Baldev Singh S/o Sangha Singh residents of Village Mian Wala are involved in illicit trafficking of *heroin* which was recovered by the troops of BSF on 26.12.2021 and handed over to NCB. It is claimed that further information was received by I.O. that on 14.02.2022 all the aforementioned suspected persons would meet on a culvert near Kale Assal. The persons were intercepted on 14.02.2022 and it is claimed that during interrogation all of them suffered disclosure admitting their involvement in the aforesaid recovery of 32.900 kg of *heroin*.

3. Counsel for the petitioner submits that the alleged involvement of the petitioner on the basis of secret information that too after about 1½ months of the occurrence is without any basis and there is no incriminating evidence against the petitioner. So far as disclosure made by him while in police custody cannot be relied upon to drive home offence *qua* him in view of law laid down in **Tofan Singh Vs. State of Tamil Nadu, (2021) 4 SCC 1.**

4. Per contra, Mr. Goel has referred to the specific allegations against the petitioner in the complaint. The same are being culled out here for perusal :

“51. That an information was received by Sh. Vikash Singh, I.O. from a reliable source on 13.02.2022 that Shamsheer Singh @ Shera S/o- Sukhwant Singh, Sarbjeet Singh @

Sabba R/o-Village-Wan Tara Singh and Baldev Singh R/o- Village-Mian Wala are involved in illicit trafficking of Heroin which was recovered by the troops of BSF in the area of responsibility of BOP-M W Uttar on 26.12.2021 which was handed over to NCB, Amritsar.

52. That Further information was received by Sh. Vikash Singh, I.O. on 14.02.2022 that the above mentioned suspected persons would meet on culvert near canal of village Asal Uttar between 1900 Hrs to 2200 Hrs on 14.02.2022.
53. That on the basis of the above mentioned reliable information, a team of NCB Formed by Sh. Sandeep Kumar Yadav, Assistant Director mounted naka on culvert near canal of village Asal Uttar and the above mentioned suspected persons were intercepted on 14.02.2022 by a team led by Sh. Sanjeev Kumar, I.O. and brought to NCB Office at B-181, Ranjit Avenue, Amritsar-143001 for further enquiry/interrogation for verifying the above mentioned information and their role in the illicit trafficking of 32.900 Kg Heroin which was recovered in the area of responsibility of BOP-M W Uttar.
54. That during the preliminary enquiry/interrogation, Shamsher Singh @ Shera S/o-Sukhwant Singh, R/o-Village-Daleri, PS-Khalra, Dist-Tarn-Taran, Sarbjeet Singh @ Sabba S/o Balveer Singh R/o-Village-Wan Tara Singh, PS-Khalra, Dist-Tarn-Taran and Baldev Singh S/o Sangha Singh R/o-Village-Mian Wala, PS-Khemkaran, Dist-Tarn-Taran disclosed and admitted their involvement in illicit trafficking of 32.900 Kg Heroin.
55. That, during further course of investigation Shamsher Singh @ Shera S/o- Sukhwant Singh, R/o-Village-Daleri, PS-Khalra, Dist-Tarn-Taran, Punjab was issued a notice

U/s 67 to appear before the I.O. on 15.02.2022. Prior to tendering of his statement he was duly explained about the provisions and rights of the individual under the Act by the complainant. He was also informed that he had the legal right to remain silent and if given, his statement could be used against him or any other person mentioned in his statement in the Court of law.

56. That, Shamsheer Singh @ Shera S/o-Sukhwant Singh tendered his statement voluntarily, without any duress, coercion, influence or promise, in which Shamsheer Singh @ Shera S/o-Sukhwant Singh admitted about his involvement in the trafficking of the seized Heroin (32.900 Kg.) on 26.12.2021. The accused Shamsheer Singh @ Shera S/o-Sukhwant Singh, made a disclosure statement and admitted in his voluntary statement recorded u/s 67 of NDPS Act 1985 that he along with his associate namely Baldev and Sarabjit had gone to India Pakistan border of BOP-MW Uttar 02 times earlier also to receive the consignment (Heroin) from Pak Smugglers. They had succeeded to pass the consignment of Heroin on past two occasions.
57. That, based on the disclosure statement tendered U/s 67 of NDPS Act, 1985 and on the basis of having reason to believe that he had committed an offence which is punishable under NDPS Act. Shamsheer Singh @ Shera S/o-Sukhwant Singh, R/o-Village-Daleri, PS-Khalra, Dsit-Tarn-Taran, Punjab was placed under arrest on 15.02.2022 at 1755 Hrs. The information of his arrest was given telephonically as per his wish on the same date to his father Sukhwant Singh.”

5. He further refers to Para 97 which shows that there were calls between the present petitioner and Sarabjit Singh and co-accused Baldev

Singh. He thus submits that from the call details all of the accused *inter se* between them there is an active link established and thus they are having participated together in smuggling of *heroin* is not ruled out. He further refers to the antecedents of the petitioner claiming that he is facing another FIR under the NDPS Act and thus he being second offender should not be granted concession of bail.

6. Counsel for the petitioner submits that the petitioner is behind bars for about two years since 14.02.2022. He further points out that by now only two out of 14 cited witnesses stand examined. He places on record the orders passed by the concerned Court dated 22.12.2023 and 01.02.2024 to show that the witnesses are being summoned though Bailable Warrants to submits that the trial is not likely to conclude in the near future.

7. Having heard counsel for the parties and after going through records of the case, without commenting on the merits of the case, keeping in view the incarceration suffered by the petitioner and the nature of evidence against him i.e. primarily in the form of disclosures suffered in custody, the present petition is allowed. The petitioner is ordered to be released on bail on his furnishing bail bonds/surety bonds to the satisfaction of the Trial Court/Duty Magistrate concerned.

8. 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 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.
9. 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.
10. Needless to say that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

February 14, 2024		(Pankaj Jain)
Dpr		Judge
Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No