



CRM-M-35392-2024(O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

229-A

CRM-M-35392-2024(O&M)
Decided on: 18.12.2024

Tirath Singh @ Kali

... Petitioner(s)

Versus

State of Punjab

... Respondent(s)

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

PRESENT: Mr. Arjun Veer Sharma, Advocate
for the petitioner(s).

Mr. Randhir Singh Thind, DAG, Punjab.

KIRTI SINGH, J. (Oral)

The jurisdiction of this Court under Section 439 Cr.P.C. has been invoked for grant of regular bail to the petitioner in case FIR No.192 dated 03.12.2023, under Sections 21 and 29 of Narcotic Drugs and Psychotropic Substance Act, 1985, registered at Police Station Barnala, District Barnala.

2. The contents of the above-mentioned FIR are reproduced herein below:-

“Copy Ruqa, SHO Barnala, Fateh, today I SI along with SI Gurbachan Singh, ASI Jagdeep Singh 847, ASI Jagdev Singh 672, Constable Kuldeep Singh 828, C Gurpreet Singh 831, alongwith laptop printer were present at Bus Stand Pharwahi on govt.vehicle no.PB-13-BA-1824 whose driver is C.Harjinder Singh 864 and At around 8:30 PM, one secret informer came and gave me secret information that Tirath Singh @ Kali s/o Rajinder Singh r/o Tibba and Lovepreet Singh @ Lovi s/o Nasib Singh r/o Raia now resident of Sandhu Patti, Barnala, both of them had formed a gang and used to purchase Heroin from Border areas and further used to sell it in the villages of



Barnala and today also they are in opportunity to sell Heroin to their customers and if immediate raid would be conducted, they can be apprehended alongwith huge quantity of Heroin. The said information is true and reliable. Accused Tirath Singh @ Kali s/o Rajinder Singh r/o Tibba and Lovepreet Singh @ Lovi s/o Nasib Singh r/o Raia now resident of Sandhu Patti, Barnala by keeping Heroin in their possession has committed an offence u/s 21 NDPS Act. Ruqa is sent to police station. Further investigation is handed over to SI Gurbachan Singh. After registration of FIR its number may kindly be given. Information be also given to Incharge CIA Barnala and SHO Barnala. I SI alongwith police party at the spot at Bus Stand, Pharwahi, at 09:15 PM, SI Kuldeep Singh 343/BR, dated 03.12.2023.”

3. Learned counsel for the petitioner submits that petitioner has been falsely implicated in this case and he has no concern with the alleged offence. It is alleged that recovery of 262 grams of heroin was effected from the petitioner, which is marginally above than the commercial quantity and he has undergone an actual custody to 1 year and 11 days.

4. *Per contra* learned State counsel submits that the petitioner was actively involved in the commission of the offence. He has filed custody certificate in Court today and the same is taken on record. As per custody certificate, the petitioner has undergone actual custody of 01 year and 11 days and there are 06 other criminal cases registered against him, however, he is on bail in 04 cases and has been acquitted in one case. He on instructions from the concerned investigating officer submits that charges were framed on 07.09.2024 and out of total of 15 prosecution witnesses, only one has been examined. He, however, submits that in view of the serious allegations against the petitioner, he is not entitled to the concession



of regular bail.

5. Heard the rival submissions made by learned counsel for the parties.

6. In the cases of *'Sukhchain Singh @ Manga Versus State of Punjab, CRM-M-7857-2022 decided on 04.04.2022, Pardeep Singh versus State of Punjab, CRM-M-46244-2022 decided on 19.01.2023, Hari Yadav @ Haiya versus State of Punjab (CRM-M-37645-2021)' decided on 11.11.2022, 'Jang Kanwar Versus State of Punjab (CRM-M-53415-2021)' decided on 19.01.2022, 'Shankar Prashad Chanau Versus The State of Punjab, CRM-M-24090-2020, decided on 27.08.2020, Gurpreet Kumar Versus State of Punjab, CRM-M-17021-2021, decided on 31.08.2021, Salim Versus State of Haryana, CRM-M-42436-2020, decided on 24.02.2021, Gagandeep Versus State of Punjab, CRM-M-3055-2021, decided on 27.01.2021, Gurpreet Singh @ Gopi Versus State of Punjab, CRM-M-41039-2019, decided on 26.02.2020, Dalbara Singh Versus State of Punjab, CRM-M-47880-2022 decided on 16.01.2023', and Vivek Watts versus State of Punjab, CRM-M-13791-2022 decided on 15.02.2023*, where the recovery from the accused was marginally above the commercial quantity for the respective contraband in each case, the Court granted bail to the accused therein.

7. In the present case, the alleged recovery from the petitioner is of 262 grams of heroin, which is marginally higher than the commercial quantity. In this situation, the provisions of Section 37 of the NDPS Act can be relaxed to an extent and the case of the petitioner can be considered for the grant of bail, moreso, when he is in custody since 06.12.2023 and out of 15 prosecution witnesses, only one has been examined till date.



8. Considering the facts and circumstances of the case, in particular that the petitioner is in custody for 01 year and 11 days; charges were framed on 07.09.2024 and out of 15 prosecution witnesses, only one has been examined till date; the trial is likely to take a considerable time, thus further incarceration of the petitioner would be violative of his right enshrined under Article 21 of the Constitution of India and the rigors of Section 37 of NDPS Act can be diluted bearing in mind the right to a speedy trial, thus, the present petition for grant of regular bail deserves to be allowed.

9. Without commenting anything on the merits of the case, lest it may prejudice the trial, the present petition is allowed and the petitioner is ordered to be released on regular bail on his furnishing adequate bail/surety bonds to the satisfaction of the concerned learned trial Court/Duty Magistrate. The petitioner shall also abide by the following conditions:-

- (I) The petitioner will not tamper with the evidence during the trial.
- (II) The petitioner will not pressurize/intimidate the prosecution witness(s).
- (III) The petitioner will appear before the trial Court on the date fixed, unless personal presence is exempted.
- (IV) The petitioner shall not commit an offence similar to the offence of which he is accused of, or for commission of which he is suspected.
- (V) The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

10. In case of breach of any of the above conditions, the prosecution shall be at liberty to move an application for cancellation of bail before this Court.



11. However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial Court would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

12. Pending miscellaneous application(s), if any, also stands disposed of.

(KIRTI SINGH)
JUDGE

18.12.2024
Kapil

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