

2024:PHHC:164389



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

Sr. No.225-2

CRM-M-39737-2024 (O&M)

Date of decision : 10.12.2024

Shamsher Singh @ Samser Singh @ Shera

..... Petitioner

VERSUS

State of Punjab

..... Respondent

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Mr. B.S. Bhalla, Advocate for the petitioner.

Mr. Vinay Kumar Malhotra, DAG, Punjab.

KIRTI SINGH, J. (Oral)CRM-44788-2024

This application has been filed for adding Section 25 of the Arms Act, 1959 in the head note as well as in the prayer clause of the main petition.

2. Notice of the application.

3. Mr. Vinay Kumar Malhotra, DAG, Punjab, accepts notice on behalf of the respondent-State and has no objection, if the application is allowed.

4. Accordingly, the application is allowed and Section 25 of the Arms Act, 1959 be added in the head note and in the prayer clause of the main case.

5. Registry is directed to carry out necessary correction in the head note and in the prayer clause of the main petition.

2024:PHHC:164389

CRM-M-39737-2024

6. 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.143 dated 27.11.2023, under Section 21(c) of NDPS Act, 1985 (Section 29 of NDPS Act added later on) and Section 25 of the Arms Act, 1959, registered at Police Station Bhogpur, District Jalandhar.

7. The translated version of the FIR is reproduced below:-

“Station House Officer Bhogpur, Jai Hind. Today I SI along with ASI Mandeep Singh, 958 HC-Gauravdeep Singh 987, HC Neeraj Kumar 1093, HC Mohan Lal 1293, HC Gurpreet Kaur 953 were going in a government vehicle PB 65 BF 4216 being driven by CT Amandeep Singh 1573 on patrolling duty in search of bad elements from Kartarpur to Kishangarh then Bhogpur and when the police party was 100 meter a head of Kala Bakra village. to Jama Dhaba on main highway then two young boys were seeing standing carrying heavy polythene bag in their right hands and after seeing the police party both of them threw their respective bags on the kacha rasta, then I ASI, got the vehicle stop and apprehended them with the help of team members and on enquiry the first boy disclosed his name as Shamsher Singh @Shera son of Satnam Singh resident of Algo Khurd P.S. Valtoha District Tarn Taran and another boy told his name as Gurwinder Singh @Changiari son of Gursewak r/o Alko Kalan P.S. Valtoha Distt. Tarn Taran. Then I SI introduced my self and my rank to them and stated that there seems to be some intoxicants in the bags thrown by them and you have got a legal right to get the search done from any Magistrate Sahib or Gazetted officer which can be arranged on the spot. Both of them turn by turn stated that we trust you and you can conduct our search as well as the search of the bags. Then I SI prepared the separate

2024:PHHC:164389



consent memos which were signed by Shamsher Singh @Shera and Gurwinder Singh @Changiari and signed by witnesses. Then I SI before conducting the search tried to join independent witness form the public but nobody was ready for that and then I SI in the presence of the team members opened the bag thrown by Shamsher Singh @Shera in which heroine was recovered and on weighing it was found 200 grams heroine which was kept in a separate plastic box, parcel was prepared and I put my seal of BS on it. Then I SI opened the bag thrown by Gurwinder Singh @Changiari from which heroine was recovered and on weighing it on electronic weighing machine 100 grams of heroine was recovered which was kept in a separate plastic box and I put my seal of BS on it and the seal was later on handed over to HC Gaurav Deep 987. Both the plastic boxes containing 200 gram and 100 gram heroine alongwith the seal was taken into police possession by way of separate fards. Accused Shamsher Singh @Shera and Gurwinder Singh @Changiari by keeping 300 grams of heroine in their possession have committed an offence under Section 21 (c)/61/85 of NDPS Act. Therefore ruqa is being sent through CT Amandeep Singh 1573 to P.S. for registering the case and number of the case be informed after registering the same. Special report be issued to Senior Officials and Illaga Magistrate. I am busy on the spot for investigation. Sd/- Bhupinder Singh.”

8. Learned counsel for the petitioner submits that allegedly, recovery of 200 grams of heroin was made from the bag of the petitioner which is non-commercial quantity. He further submits that the petitioner has been falsely implicated in this case. The petitioner has undergone an actual custody of 01 year and 09 days and there is one another case under the

2024:PHHC:164389



Excise Act has been registered against the petitioner, however, he is on bail in that case.

9. *Per contra*, learned State counsel has vehemently opposed the submissions made by the learned counsel for the petitioner. He has filed custody certificate in Court today and the same is taken on record. As per custody certificate, the petitioner has undergone an actual custody of 01 year and 09 days and there is one another case under the Excise Act has been registered against the petitioner, however, he is on bail in that case. He on instructions from ASI-Paramjit Singh submits that charges were framed on 05.10.2024 and out of 11 total prosecution witnesses, none has been examined. He further submits that in view of serious allegations against the petitioner, he is not entitled to the concession of regular bail.

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

11 The veracity of the allegations leveled against the petitioner shall be established during the course of the trial. Admittedly, recovery of 200 grams of heroin was made from the bag of the petitioner which is non-commercial quantity. The petitioner has undergone an actual custody of 01 year and 09 days and there is one another case under the Excise Act has been registered against the petitioner, however, he is on bail in that case. Charges were framed on 05.10.2024 and out of 11 total prosecution witnesses, none has been examined. The conclusion of the trial will take a considerable time. Therefore, further incarceration of the petitioner will not serve any purpose and will be violation of Article 21 of the Constitution of India including the right to speedy trial, and is against the principle “Bail is a rule, jail is an

2024:PHHC:164389



exception” as elucidated in the judgment of Apex Court in **“Dataram Singh vs. State of Uttar Pradesh and another, (2018) 3 SCC 22”**.

12. Deprivation of personal liberty without ensuring speedy trial is not consistent with Article 21. While deprivation of personal liberty for some period may not be avoidable, period of deprivation pending trial/appeal cannot be unduly long. The Apex Court in **“Abdul Rehman Antulay and others v. R.S. Nayak and another”, 1992(2) RCR (Criminal) 634** observed that Right to Speedy Trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial.

13. 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

2024:PHHC:164389



disclosing such facts to the Court or to any police officer or tamper with the evidence.

14. 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.

15. 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.

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

(KIRTI SINGH)
JUDGE

10.12.2024
Ramandeep Singh

Whether speaking / reasoned	Yes/No
Whether Reportable	Yes/No