

2024:PHHC:148507



220.

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-39965-2024

Date of decision: 13.11.2024

Harjinder Singh alias Nikka alias Harwinder Singh Petitioner

Versus

State of Punjab Respondent

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Lakhwinder Singh Mann, Advocate, for the petitioner.

Ms. Avneet, AAG, Punjab.

GURBIR SINGH, J.

1. This petition has been filed under Section 483 of BNSS, 2023 for grant of regular bail to the petitioner in case FIR No.9, dated 13.01.2024, under Sections 21(c) of NDPS Act, 1985 and Sections 10, 11, 12 of Aircraft Act, 1934 (later on offence under Section 29 of NDPS Act, 1985 added and Sections 10, 11, 12 of Aircraft Act, 1934 deleted) registered at Police Station Khalra, District Tarn Taran.

2. As per prosecution version, on 13.01.2024, while the police party was on patrolling duty, a telephonic call was received from Rawat Chetri, Company Commander B Company 103 BN BSC that in the fields of Kashmir Singh, he has recovered a packet of contraband. The police party reached there and said packet was found to be heroin of 608 grams.

2.1 During the course of investigation, on 02.02.2024, a secret information was received that said recovered heroin was ordered by the present petitioner in connivance with co-accused Sandeep Singh @ Kaka and Sajjan Singh. They were nominated in the present case and were arrested on 03.02.2024. Petitioner suffered statement that he in connivance with his co-accused had ordered the recovered heroin from Pakistan smugglers through drone. However, due to non-recovery of drone, Sections 10, 11, 12 of Aircraft Act were deleted and Section 29 of NDPS Act was added. After completion of investigation, challan was presented in the case.

3. Learned counsel for the petitioner has argued that the recovery of heroin was effected from the fields of Kashmir Singh on 13.01.2024 and the petitioner has been implicated in the present case on 03.02.2024 on the basis of secret information. There is no evidence against him in the challan. No recovery was effected from the petitioner. No call record is collected. There is no evidence against the petitioner except his own statement made before the police while in custody.

4. Learned State counsel has opposed the petition on the ground that the petitioner is indulged in smuggling of heroin. He in connivance with co-accused ordered the recovered heroin through drone from Pakistan smugglers. He is involved in one more case.

5. I have heard the submissions of learned counsel for the parties.

6. The recovery of heroin was effected from the fields of Kashmir Singh. Challan in the case has already been presented. There is

neither any call record of the petitioner with any person ordering the delivery of heroin nor there is any other evidence to connect him with the recovered contraband.

6.1 On asking, learned State counsel submits that the evidence collected against the petitioner is the secret information and his own statement recorded by the police while in custody. Any admission made by the accused while in custody before the police is inadmissible as per Section 25 of the Indian Evidence Act/Section 23(1) of BNSS, 2023.

6.2. Confessional statement of accused in custody is admissible. The legal precedent in ***Tofan Singh Versus State of Tamil Nadu, (2021) 4 SCC 1***. In case ***Shreyansh Jhabak Versus State of Chhattisgarh, Law Finder Doc Id # 2004763***, no recovery was effected from the petitioner and bail was granted.

6.3 In the case in hand, there is no recovery from the conscious possession of accused and there is no legal evidence collected against him so for the purpose of satisfying the rigors of Section 37 of NDPS Act. The petitioner cannot be said to be prima facie guilty of any allegation attracting Section 37 of NDPS Act.

7. Considering the fact that the petitioner is in custody since 03.02.2024, recovery is not effected from the conscious possession of the petitioner, but from the fields of some other person; culpability of the petitioner would be determined during trial and completion of trial will take

some time, this Court deems it appropriate to release the petitioner on regular bail.

8. Accordingly, without commenting on the merits of the case, the present petition is allowed and the petitioner is ordered to be released on regular bail subject to his furnishing bail bonds/surety bonds to the satisfaction of concerned learned trial Court/Chief Judicial Magistrate/Duty Magistrate, with the further condition that he shall get his mobile number registered in the trial Court for receiving messages on CIS system and shall not change his mobile number during the pendency of the case. He shall also furnish his residential address to the trial Court as well as to the concerned police station and shall not change his residence without intimation to the concerned court. The court concerned may impose any other condition as it deems fit. In case of default, the trial Court is free to cancel the bail granted to the petitioner.

9. However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case and the trial Court shall decide the case on the basis of material available before it.

(GURBIR SINGH)
JUDGE

November 13, 2024
sanjeev

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No