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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-47160-2023 (O&M)
Date of Decision: 14.02.2024

Makhan Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Ms. Sushma Chopra, Advocate
for the petitioner.

Ms. Amrita Garg, AAG, Punjab.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 439 Cr.P.C. is for the grant of regular bail in case bearing FIR No.0096 dated 06.08.2022 under Sections 21(c), 25 and 29, 61, 85 of the NDPS Act and Section 419 IPC at Police Station Mokhampura, District Amritsar.

2. The brief facts of the case are that the petitioner-Makhan Singh and pillion rider-Balwinder Singh @ Billa came to be apprehended with 20 grams and 280 grams of heroin respectively.

3. The learned counsel for the petitioner contends that only 20 grams i.e. non-commercial quantity of contraband had been recovered from the petitioner and the recovery of 280 grams of heroin effected from the co-accused/Balwinder Singh @ Billa could not be clubbed with the recovery effected from the petitioner. Reliance is placed on the judgments in *Prahlad Singh Versus State of Haryana, (2020) 2 RCR*

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(Criminal) 597, Jorawar Singh Versus State of Punjab, CRM-M-23804-2020 decided on 16.08.2021 and Nirbhay Singh Versus State of Punjab, CRM-M-48617-2018 decided on 13.11.2018 to contend that when the recovery is being effected from one of the accused riding a two wheeler then the other accused cannot be held to be liable as he cannot be said to be in conscious possession at least for the purposes of the decision of the bail application.

4. On the other hand, the learned State counsel contends that as both the accused were travelling together on a motorcycle and respective recoveries of contraband had been effected from each of them, it could not be said that the petitioner was not in conscious possession of the contraband also recovered from his co-accused. Thus, the petitioner did not deserve the concession of regular bail.

5. I have heard the rival contentions of both the parties.

In the case of Prahlad Singh's case (supra), the bag was in possession of the pillion rider and the driver of the motorcycle was granted the concession of bail.

In the case of Jorawar Singh's case (supra), the petitioner who was a pillion rider was granted the concession of bail, though the driver-Jagsir Singh had also been granted bail.

In the case of Nirbhay Singh's case (supra), the petitioner was driving the motorcycle was granted bail when the recovery was effected from the co-accused Hira Singh, who was a pillion rider and holding a plastic bag.

6. Coming back to the facts of the present case, as has already been mentioned hereinabove, the recovery from the petitioner is of non-commercial quantity of contraband. It would be a matter of adjudication during Trial as to whether the recovery from the co-accused can also be clubbed with the recovery from the petitioner. Admittedly, the petitioner is a first-time offender, in custody since 06.08.2022 and none of the 11 prosecution witnesses have been examined so far. Therefore, the Trial of the present case is not likely to be concluded anytime soon. Thus, in the present factual scenario, a *prima facie* satisfaction under Section 37 of the NDPS Act can be recorded and the case of the petitioner can be considered for the grant of bail.

7. Thus, without commenting on the merits of the case, the present petition is allowed and the petitioner-Makhan Singh is ordered to be released on bail in case FIR No.0096 dated 06.08.2022 under Sections 21(c), 25 and 29, 61, 85 of the NDPS Act and Section 419 IPC, Police Station Mokhampura, District Amritsar subject to his furnishing adequate bail bonds/surety bonds to the satisfaction of the Trial Court/concerned Duty Magistrate.

8. The petitioner shall appear before the police station concerned on the first Monday of every month till the conclusion of the trial and inform in writing each time that he is not involved in any other case/crime other than the present one.

9. In addition, the petitioner (or anyone on his behalf) shall prepare an FDR in the sum of Rs.1,00,000/- and deposit the same with

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the Trial Court. The same would be liable to be forfeited as per law in case of the absence of the petitioner from Trial without sufficient cause.

10. Nothing expressed hereinabove would be construed to be an expression of any opinion on merits of the case.

(JASJIT SINGH BEDI)
JUDGE

February 14, 2024
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No