

106+210 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-49933-2023 in/and
CRM-M-55307-2023
Date of decision: 08.01.2024

SUKHJINDER SINGH ALIAS PINKA

...PETITIONER

V/S

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. R.S. Sidhu, Advocate for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR J. (ORAL)

CRM-49933-2023

The instant application has been filed under Section 482 Cr.P.C. for placing on record the copy of order dated 20.09.2021 as Annexure P-3 and copy of order dated 01.11.2021 as Annexure P-4.

For the reasons mentioned in the application, same is allowed.

Annexures P-3 and P-4 are taken on record subject to all just exceptions.

MAIN CASE

This is the first petition filed under Section 439 of Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No.131 dated 11.08.2023 registered under Section 21(b) of Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station City Patti, District Tarn Taran.

2. The FIR was lodged on the statement of Sub-Inspector Balwinder Singh on the allegations that the police party was going on a government vehicle from Tarn Taran to Patti for patrolling and interception of anti-social elements. When police party reached near the bridge drain Patti, one person was seen standing. On sighting the government vehicle and the police party, he

became nervous and started walking quickly towards the Patti city and threw a heavy polythene from his right pocket of his pant which was being carried by him. The complainant with the help of police officials apprehended the person who disclosed his identity as Sukhjinder Singh @ Pinka (the present petitioner). On the basis of search conducted by the investigating officer, 200 grams of Heroin was recovered, which was taken into possession. Investigation in this regard was carried out.

3. Learned counsel for the petitioner *inter alia* contends that there is non-compliance of Sections 50 and 52(a) of the NDPS Act, which suffocates the entire case of the prosecution and the alleged recovery made from the petitioner does not fall within the ambit of commercial quantity. As such, the rigor of Section 37 would not come into play and the investigating agency has already concluded investigation and submitted the final report on 06.10.2023.

4. Per contra, the learned State counsel, on instructions from ASI Jarnail Singh, opposes the prayer of grant of regular bail to the petitioner on the ground that conscious possession of the petitioner has been duly established and he is habitual offender and also involved in one more FIR under the NDPS Act. Custody certificate filed by respondent-State is taken on record.

5. A two Judge Bench of Hon'ble Supreme Court in '**Satender Kumar Antil v. CBI**' (2022) 10 SCC 51, with respect to prevailing conditions of undertrial prisoner in India has observed:

"6. Jails in India are flooded with undertrial prisoners. The statistics placed before us would indicate that more than 2/3rd of the inmates of the prisons constitute undertrial prisoners. Of this category of prisoners, majority may not even be required to be arrested despite registration of a cognizable offence, being charged with offences punishable for seven years or less. They are not only poor and illiterate but also would include women. Thus, there is a culture of offence being inherited by many of them. As observed by this Court, it certainly exhibits the mindset, a vestige of colonial India, on the part

of the investigating agency, notwithstanding the fact arrest is a draconian measure resulting in curtailment of liberty, and thus to be used sparingly. In a democracy, there can never be an impression that it is a police State as both are conceptually opposite to each other.”

6. Having heard the learned counsel for the parties and after perusing the record of the case, it transpires that the charges have been framed on 09.10.2022 and the trial of the case has not commenced. The investigating agency has already concluded the investigation. The petitioner is having a fixed abode and a family, as such, he is not a flight risk. Culpability, if any, would be determined at the time of the trial. No useful purpose would be served by further detention of the accused-petitioner.
7. Keeping in view the law laid down by the Hon’ble Supreme Court of India in ***Prabhakar Tewari Vs. State of U.P. and another 2020 (1) R.C.R. (Criminal 831)*** and ***Maulana Mohd. Amir Rashadi Vs. State of U.P. and Another, 2012 (2) SCC 382***, the involvement of the petitioner in other cases would not be a ground to refuse grant of concession of regular bail.
8. Keeping in view the facts and circumstances of the case, the present petition is allowed without commenting upon the merits of the case lest it may prejudice the outcome of the trial, the petitioner-Sukhjinder Singh @ Pinka is ordered to be released on regular bail during trial on his furnishing bail bonds/surety bonds to the satisfaction of Illaqa Magistrate/Trial Court.
9. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and the trial Court shall proceed without being prejudiced by observations of this Court.

January 08, 2024
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(HARPREET SINGH BRAR)
JUDGE

- (i)

Whether speaking/reasoned

Yes/No
- (ii)

Whether reportable

Yes/No