

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-64179-2023

Surinder Singh

.....Petitioner

Vs.

State of Punjab

.....Respondent

Reserved On.: 21.03.2024
Pronounced On: 02.04.2024

CORAM: - HON'BLE MR. JUSTICE DEEPAK GUPTA

Argued By: Mr. Amandeep Singh, Advocate
for the petitioner.

Mr. G.P.S. Bhullar, AAG, Punjab.

DEEPAK GUPTA, J.

By way of present petition filed under Section 439 Cr.P.C, petitioner prays for his release on regular bail in case FIR No.175 dated 29.08.2023 registered under Section 22 of NDPS (Act N: 61 of 1985) Act registered at Police Station City South, District Moga.

2.1 As per prosecution version, on 29.08.2023 a police party headed by SI Puran Singh, SHO Police Station Charik was holding a barricading at T-Point Sandhuan Wala near Moga- Charik road, when at about 01:30 pm, a car came from Moga side being driven by a young person and as it was signaled to be stopped, the driver of the car tried to flee away after alighting from the car and threw away a brown coloured bag on the ground. On apprehension, that disclosed his name as Surinder Singh i.e. petitioner. He also disclosed that there were intoxicating tablets in the bag thrown by him. SI

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Puran Singh introduced himself to the petitioner and informed him about his legal right to be searched in presence of Gazetted Officer or Magistrate but petitioner reposed faith in SI Puran Singh. Search of the thrown bag was then conducted and 750 loose intoxicating tablets were recovered, which were taken into possession after making necessary compliances. Petitioner was arrested.

2.2 During investigation, on 31.8.2023, petitioner got recovered 210 more loose tablets as concealed by him in a plot. These were also taken into possession.

2.3 The intoxicating tablets, on analysis at FSL, were found to contain the salt of Tramadol Hydrochloride. The weight of 750 intoxicating tablets as recovered on 29.08.2023 was 257.25 grams and that of 210 loose intoxicating tablets as recovered on 31.10.2023 was 72.24 grams. Thus, total weight of contraband i.e. Tramadol Hydrochloride was 329.49 grams, i.e., higher than the commercial category, which starts from 250 grams.

2.4 On completion of investigation, final report under Section 173 CrPC has already been presented in the court by citing 17 PWs. Next date of hearing before trial court is 27.3.2024. No witness has been examined so far.

3.1 It is contended by learned counsel for the petitioner that petitioner has been falsely implicated at the instance of one Kulwinder Singh, who is owner of a shop run as K.G. Telecom existing in the front of shop of the petitioner. Petitioner is in the business of sale and purchase of mobile phones and a business rival of said Kulwinder. Petitioner has turnover of more ₹1 crore per annum and has never indulged in any such activity. Kulwinder Singh having close relations with SI Puran Singh got him implicated.

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3.2 It is alleged that on 29.08.2023, petitioner was apprehended at about 07:47 a.m. from his house, as will be evident from the CCTV footage captured in the camera installed in the shop of the petitioner. Learned counsel further contends that police has shown recovery at about 01:30 p.m. and has projected to have been arrested him from T-Point Sandhuan Wala near Moga- Charik Road, which is a concocted story. Learned counsel further contends that recovery of 210 more tablets has been shown on 31.08.2023 but the CCTV footage pertaining to the said recovery would reveal that the police party reached at the spot, where a person handed over a black coloured polythene to Investigating Officer, which was later on shown to have been recovered from the petitioner pursuant to his disclosure statement. Learned counsel further contends that petitioner is in custody for the last more than six months and is not involved in any other case; that trial is likely to take long time and so, he be allowed bail.

4. Opposing the bail petition, learned State counsel contends that recovery of huge quantity of contraband falling in the commercial category was effected from the petitioner. Learned State counsel also submits that Kulwinder Singh, as referred in the petition, has no role to play in registration of the FIR. The alleged CCTV footage is not available with the police. By drawing attention towards the reply filed by way of an affidavit dated 20.03.2024 of Shri Vivek Sheel Soni, IPS, Senior Superintendent of Police, District Moga, learned State counsel submits that even the petitioner is not aware about any such CCTV footage produced before the Court, inasmuch as he had claimed that one Sunil Arora was pursuing the petition and only he

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could explain about any such footage. When said Sunil Arora and his family members were asked about the CCTV footage, they disowned any such footage. Learned State counsel further contends that petitioner was working as a drug trafficker and the case is based upon bona fide recovery of contraband from the possession of the petitioner and so, in all these circumstances, he does not deserve to be given the benefit of bail.

5. I have considered submissions of both the sides and have perused the record.

6. The total weight of the recovered contraband is 329.49 grams of Tramadol Hydrochloride, i.e., the commercial category, which starts from 250 grams. Although petitioner claims to have been apprehended from different place and much prior in time comparing to the projected place and time of arrest, on the basis of CCTV footage but the authenticity of any such CCTV cannot be commented at this stage, as it is not clear as to from which CCTV, the said footage was taken. There is no mention in the petition as to who owned the CCTV camera; who provided the CCTV footage; who are the persons visible in the footage. It is certainly not the primary evidence. Even any certificate under Section 65-B of the Evidence Act has not been produced.

7. At the same time, this Court notices from the police report that when the petitioner was apprehended, SI Puran Singh disclosed to the petitioner about his right to be searched before a Magistrate or the Gazetted Officer and as petitioner reposed faith in him, so said SI Puran Singh himself conducted the search. *Prima facie*, this is not the compliance of Section 50 of the NDPS Act and creates doubt in the prosecution story.

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8. Further, though the prosecution claims that petitioner is a drug trafficker but perusal of the custody certificate would reveal that apart from the present case, petitioner is not involved in any other criminal case. Petitioner is in custody for the last 06 months and 22 days as per the custody certificate placed on record. Challan has already been filed. There being a long list of 17 prosecution witnesses, so trial is likely to take long time to conclude.

9. Having regard to all the above facts and circumstances, but without commenting anything further on the merits of the case, this petition is allowed. Petitioner is admitted to bail on his furnishing bail bonds/surety bonds to the satisfaction of the Learned Trial Court/Duty Magistrate concerned, on usual terms and conditions.

(DEEPAK GUPTA)
JUDGE

April 02, 2024

Neetika Tuteja

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No