

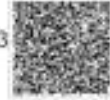


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2024:PHHC:162853



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-54048-2024
DECIDED ON: 06.11.2024

SHER SINGH

.....PETITIONER

VERSUS

STATE OF PUNJAB

....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Sukhbir Mandi, Advocate for the petitioner.

Mr. J.S Rattu, Senior DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. Relief Sought

The jurisdiction of this Court has been invoked under Section 439 of Cr.P.C. for grant of regular bail to the petitioner in case FIR No. 30, dated 19.03.2024, under Sections 21, 29 and (later on added 21(c) of NDPS Act, 1985 and section 10,11 & 12 of Air Craft Act,1934 (later on deleted section 10,11 & 12 Air Craft Act,1934 vide rapat no.20 dated 06.09.2024) registered at Police Station khalra, District Taran Taran.

2. Prosecution story, set up in the present case as per the version in the FIR read as under :-

“ Today, I, ASI along with ASI Hari Singh 895/TT, HC Jagroop Singh 619/TT, PHG Arshdeep Singh 4592, PHG Amarjeet Singh 4621, PHG Major Singh 4540 on Govt. Vehicle No. PB65-BF-1049 which is driven by S/CT Manjinder Singh 173/TT regarding patrolling and searched of bad elements were present on Village Ban Tara Singh then intimation received from BSF Company Commander BOP Dull that a Drone activity has been done in near about of Village Dull which is required to be searched. That



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I, ASI along with fellow companions were going for Village Dull then in the way, secret informer stopped our vehicle and give information that just now, a Drone is coming in near about of Village Dull and this Drone is booked by J.P. son of unknown resident of Wan, Police Station Sadar Tarn Taran, Davinder Singh son of Sukhdev Singh resident of Maarhi Gohar Singh and Jagroop Singh son of Skattar Singh resident of Manochahal Singh and they searching the Heroin in the fields by parking their vehicle near the Village. I, ASI reached near Village Dull then two young men on seeing the Police party run away on his White Car which was parked near the Stadium of the Village. When, I ASI along with fellow companions reached at the spot then BSF officials also came present at the spot then we saw that a clean shaven young man walking in the fields of Wheat, who on seeing the Police got perplexed and hide himself behind Mango Tree. I, ASI with the help of fellow companions and BSF officials apprehended him and enquired about his name and address, who disclosed his name Jagroop Singh son of Skattar Singh, resident of Manochahal, Police Station Sadar Tarn Taran and on enquiry, he disclosed that he in-connivance with J.P. son of unknown resident of Wan, Police Station Sadar Tarn Taran and Davinder Singh son of Sukhdev Singh resident of Marhi Gohar Singh consigned Heroin from Pakistan through Drone, which is lying in the fields and we all three were coming for taking the Heroin. J.P. son of unknown resident of Wan, Police Station Sadar Tarn Taran and Davinder Singh son of Sukhdev Singh resident of Marhi Gohar Singh run away from the spot while driving the Car and I was apprehended by yourself. Upon which, he presented one Mobile Phone Mark Oppo before me and disclosed that this Mobile belong to Davinder Singh and told that if the Heroin be found then informed us. Separate parcel be prepared of recovered Mobile Oppo and I, ASI sealed it with my Seal "SS" and taken into Police custody and sample seal prepared separately, seal after used was handed over to ASI Hari Singh 895/TT. Jagroop Singh disclosed that the Heroin consigned by all of us from



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Pakistan through Drone which was not found on lying in the fields. J.P. son of unknown resident of Wan, Police Station Sadar Tarn Taran, Davinder Singh son of Sukhdev Singh resident of Marhi Gohar Singh and Jagroop Singh son of Skattar Singh resident of Manochahal, Police Station Sadar Tarn Taran committed offence u/s 21, 29, 61, 85 of NDPS Act and 10, 11 and 12 of Air Craft Act, 1934 by consigning Heroin from Pakistan through Drone. Ruqa has been sent through PHG Amarjit Singh 4621 to Police Station for registration of FIR. After registration of FIR, case number be intimated. Special Reports be sent and Control Room be informed. I, ASI along with fellow companions are busy on the spot for investigation and search is continue. Within jurisdiction Dull, Time 06:10 PM”.

3. **Contentions**

On behalf of the petitioner

The learned counsel for the petitioner asserts that the petitioner has been wrongfully implicated in the present case, claiming that the alleged recovery of 50 grams of heroin was fabricated. It is emphasized that the original FIR was registered against J.P., Davinder Singh, and Jagroop Singh, with the petitioner being named solely based on the statement of a co-accused, from whom the purported contraband was allegedly seized.

On behalf of the State

Learned State counsel has filed the custody certificate of the petitioner, which is taken on record. He submits that the alleged contraband i.e 50 grams has been recovered in the present case. The quantity alleged to have been recovered though falls under the non-commercial quantity, however submits that from other co-accused contraband recovered is commercial in nature and the same was being transported from Pakistan via drone . Thus, the petitioner is not entitled to be released on regular bail.



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4. Analysis

In everyday terms, the principle of law dictates that bail is the general rule, while jail is the exception. However, this Court acknowledges that the power to grant or deny bail is extraordinary and must be exercised with caution. It is well-established that when considering a bail application (whether pre-arrest or regular bail), the Court must form a prima facie opinion as to whether reasonable grounds exist to support the accusation, or if the accusation is frivolous and baseless possibly made with the intention of harming or humiliating the individual, or falsely implicating them in the crime. This evaluation must be conducted in the light of self-imposed restrictions and the broader legal parameters outlined.

This Court is mindful that, according to the legal mandate rendered by Hon'ble Supreme Court in Criminal Appeal No. 3840 of 2023, titled "*Saumya Churasia versus Directorate of Enforcement, decided on 14.12.2023*", when considering a bail application, the Court is not obligated to meticulously examine the evidence gathered by the Investigating Agency. However, the Court must consider several factors, including the nature of the accusation, the type of evidence collected in support, the severity of the punishment for the alleged offences, the character of the accused, the unique circumstances surrounding the accused, the likelihood of securing the accused's presence during trial, the possibility of witness tampering, and the broader interests of the public or State. In the light of these factors, when assessing a bail application, the Court is required to form a prima facie opinion based on these broad guidelines, without delving into the merits of the evidence, as doing so could potentially prejudice the rights of both the accused and the prosecution.



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To evaluate the bail application under the NDPS Act, this Court finds it necessary to revisit the Preamble of the Act, which in essence states that An Act to consolidate and amend the law relating to narcotic drugs, to make stringent provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances, to provide for the forfeiture of property derived from, or used in, illicit traffic in narcotic drugs and psychotropic substances, to implement the provisions of the International Conventions on Narcotic Drugs and Psychotropic Substances and for matters connected therewith.

While addressing the objectives of the NDPS Act, the Hon'ble Supreme Court in the case of ***Durand Didier v Chief Secretary, Union Territory Of Goa (1990) 1 SCC 95*** emphasized that the rampant issue of clandestine smuggling and illegal trafficking of drugs and substances has led to widespread drug addiction, particularly among adolescents and youth. This has had a harmful and devastating impact on society. With grave concern, it was noted that the organized activities of criminal groups and the illegal importation of narcotic drugs and psychotropic substances into the country have caused a significant increase in drug addiction, especially among young people and students, affecting both genders. The menace has grown to alarming proportions in recent years. Consequently, to effectively combat and eliminate this growing threat, which is causing severe and harmful effects on society as a whole, Parliament, in its wisdom, enacted the NDPS Act of 1985, introducing provisions that mandate minimum imprisonment and fines for such offences.

The tactics employed by drug peddlers engaging in the narcotics trade often involve starting with small or intermediate quantities, banking on



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the assumption that, even if apprehended, they will be granted bail. This, however, cannot be the intended purpose of the law. Such individuals, involved in trafficking even modest amounts of contraband, are akin to termites eroding the fabric of society. It is imperative that, when considering bail applications from those engaged in the trafficking of small or intermediate quantities, the Court takes a firm and resolute stance, addressing them with the utmost severity to curb this insidious menace..

Merely because the quantity involved is categorized as "Intermediate Quantity" does not, by itself, bestow an automatic right to bail. Granting bail to those accused of trafficking or peddling highly dangerous substances such as Heroin/Chitta would essentially offer *carte blanche* for illegal activities. Such a decision would embolden these individuals to persist in their illicit trade, operating under the misguided belief that even if apprehended, they could be swiftly released on bail. It is imperative that such conduct and the false sense of impunity it fosters, be dealt with decisively, as they pose a profound threat to the very fabric of our society and nation. The modus operandi of the masterminds behind the illegal trafficking whether dealing in small or intermediate quantities must be met with unwavering severity. The legislative intent and the rule of law must be rigorously enforced, and cannot be allowed to be undermined, irrespective of the quantity in question.

In the esteemed view of this Court, even if the stringent provisions of Section 37 of the NDPS Act do not apply, the petitioner cannot be granted an advantage or permission to seek bail, especially when 50 grams of Heroin/Chitta (the contraband in question) was recovered from him. Granting



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bail at this stage could inadvertently signal a tacit approval or encouragement of such illegal activities.

The Himachal Pradesh High Court has, in recent times, ruled on the case of ***Surinder Kumar vs. State of Himachal Pradesh bearing no. Cr.MP(M) No.489 of 2024*** that

9. The learned counsel for the petitioner submits that in the instant case, once the bail petitioner is involved in contraband relating to intermediate quantity of Heroin/Chitta [5.65 grams], therefore, the petitioner has claim for bail as of a right. In considered view of this Court, the plea is without any substance for the reason that merely because intermediate quantity of Heroin/Chitta is involved, the same cannot confer any right for anticipatory bail. In facts of this case, the alleged contraband was recovered from the bail petitioner. Permitting enlargement on bail shall certainly amount to granting leverage or licence to the petitioner and others, who indulged in nefarious activities with the hope and belief that they will be enlarged on bail by the Court(s). The dangerousity and killing instinct of Heroin/Chitta (as involved in this case) also restrains the Courts from exercising its discretion in favour of the bail petitioner, from where Heroin/Chitta (5.65 grams) was recovered. Even a pinch of touch out of one gram of Heroin (Chitta) is sufficient enough to make a person initially addict, without which the person becomes repulsive. Such addiction for them leads to peddling for own sustenance and for easy trading. It is high time that the rule of law needs to be strictly enforced and the societal interests are safeguarded and protected; lest tomorrow one and all may face repentance, repentance and repentance only and nothing more. In the interests of society and to enforce rule of law as discussed hereinabove and once the alleged contraband (5.65 grams) has been recovered from



the bail petitioner, the prayer for enlargement on bail is without merit at this stage.

5. **Conclusion**

Turning to the merits of the case in hand, where 50 grams of heroin have been seized from the petitioner, the method of trafficking evidenced by the contraband being smuggled from Pakistan via drone highlights the sophisticated network facilitating such illegal trade, which demands a resolute and uncompromising response. Furthermore, the petitioner’s criminal history, marked by involvement in three other similar cases, raises serious concerns about the likelihood of reoffending. There is a distinct possibility that, if granted bail, the petitioner will once again partake in this unlawful enterprise. To grant bail at this stage would, in effect, subtly convey a tacit endorsement or unintentional encouragement of such nefarious activities.

6. **Decision**

In the light of above, dictums and discussions made and the modus operandi of the kingpins engaged in illicit activities, whether trafficking in small or intermediate quantities, must be met with unwavering resolve and stringent action. The intent of the legislature and the sanctity of the rule of law must be upheld at all costs, and cannot be allowed to be undermined, regardless of the quantity involved.

Hence, the same stands dismissed with no order as to costs.

(SANDEEP MOUDGIL)
JUDGE

06.11.2024
Sham

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