

Before Vikas Bahl, J.

GURPREET SINGH @ LALLA—Petitioner

versus

STATE OF PUNJAB—Respondent

CRM-M No. 20349 of 2022

May 18, 2022

Criminal Procedure Code, 1973—S.439—Narcotic Drugs and Psychotropic Substances Act, 1985—Ss. 21, 22, 25 and 29—Regular Bail—Recovery of 295 grams of intoxicant powder (heroin)—Petitioner/accused not named in secret information and recovery of 295 grams of intoxicant powder not effected from him—Petitioner/accused arrested on basis of disclosure statement of co-accused, who also did not stated that it was the petitioner from whom co-accused and other co-accused purchased the powder rather, their statements as recorded in paragraph 6 of order rejecting bail to petitioner/accused were to the effect that they used to purchase intoxicant material from co-accused/non-applicants—Thus, question as to whether petitioner/accused can also be implicated with respect to recovery of 295 grams of intoxicant powder, would be a matter of debate, which would be adjudicated during course of trial—Recovery from petitioner/accused is of 35 grams of intoxicant powder and same is far less than stipulated commercial quantity of 250 grams—Moreover, co-accused already granted concession of regular bail—Hence, grant of regular bail.

Held, that the petitioner was not named in the secret information and the recovery of 295 grams of intoxicant powder was not effected from him. The petitioner was arrested on the basis of the disclosure statement of Lakhvir Singh, who had also not stated that it was the petitioner from whom Lakhvir Singh and other co-accused had purchased and rather, their statements as recorded in paragraph 6 of the order rejecting bail to the petitioner were to the effect that they used to purchase intoxicant material from co-accused/non-applicants, namely, Jaswinder Singh @ Bablu, Gurpreet Singh @ Ghunda and Rajvir Singh @ Deol. The question as to whether the petitioner could also be implicated with respect to recovery of 295 grams of intoxicant powder, would be a matter of debate, which would be adjudicated during the course of the trial. The recovery from the petitioner is of 35 grams of intoxicant powder and the same is far less than the stipulated

commercial quantity of 250 grams. Further, co-accused of the petitioner, namely, Sarban Singh @ Sarwan Kumar, has already been granted the concession of regular bail by this Court, vide order dated 02.12.2021 passed in CRM-M-49251-2021. The petitioner has been in custody since 15.07.2021 and there are 16 prosecution witnesses, none of whom have been examined, thus, the trial is likely to take time.

(Para 7)

Barjinder Singh, Advocate, *for the petitioner.*

Sarabjit S. Cheema, A.A.G., Punjab.

VIKAS BAHL, J. (ORAL)

(1) This is a first bail application under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.47 dated 11.07.2021, registered under Sections 21, 22, 25 and 29 of the Narcotic Drugs & Psychotropic Substances Act, 1985, at Police Station Rureke Kalan, District Barnala.

(2) The case of the prosecution is that on 11.07.2021 SI Kuldeep Singh, who was posted as CIA Personnel, had received secret information to the effect that the co-accused of the petitioner, namely, Gagandeep Singh, Lovepreet Singh and Lakhvir Singh and Sarban Singh, used to bring intoxicant powder/tablets and sold the same in the area of Barnala and that on 11.07.2021 also, they were riding their motorcycles and in case search was conducted, they could be apprehended with the intoxicant powder and intoxicant tablets. On the basis of the said information, the FIR was registered. On 12.07.2021, Gagandeep Singh, Lovepreet Singh and Lakhvir Singh were apprehended along with two motorcycles which were not bearing any registration number and from their possession 295 grams of intoxicant powder (heroin) was recovered. On interrogation of Lakhvir Singh, the present petitioner was nominated as an accused on 13.07.2021 and thereafter arrested, and from his possession, 35 grams of intoxicant powder (heroin) was recovered on 15.07.2021. It is further the case of the prosecution that co-accused/Sarban Singh @ Sarwan Kumar was arrested on 14.07.2021 and from him, 65 grams of intoxicant powder (heroin) was recovered.

(3) Learned counsel for the petitioner has submitted that in the present case, neither the petitioner was named in the secret information received by the CIA personnel, nor he was apprehended at the spot. It is further submitted that the petitioner was implicated on the basis of the

disclosure statement of Lakhvir Singh @ Lakhi and even in the said statement, it had not been stated that it was the present petitioner who had sold the heroin to him or to the other co-accused, as during their interrogation, co-accused Gagandeep Singh, Lovepreet Singh and Lakhvir Singh had stated that they had purchased the contraband from Jaswinder Singh @ Bablu, Gurpreet Singh @ Gunda and Rajvir Singh @ Deol. It is further submitted that the petitioner is not a seller and thus, cannot be, in any way, linked with the recovery of 295 grams of intoxicant powder, which had made from the other co-accused. It is further submitted that as far as the recovery effected from the petitioner is concerned, the recovery was of 35 grams of heroin, which is far less than the commercial quantity, as the stipulated commercial quantity starts from 250 grams. It is also submitted that co-accused of the petitioner, namely, Sarban Singh @ Sarwan Kumar, who was named in the secret information and from whom the recovery of 65 grams of intoxicant powder (heroin) had been effected, has already been granted the concession of regular bail by this Court, vide order dated 02.12.2021 passed in CRM-M-49251-2021. It is further submitted that the petitioner has been in custody since 15.07.2021 and there are 16 prosecution witnesses, none of whom have been examined, thus, the trial is likely to take time.

(4) Learned State counsel has opposed the present petition for the grant of regular bail and has submitted that all the recoveries effected from the accused in the present case taken together would amount to commercial quantity and since the present petitioner is also involved in two other cases, thus, he does not deserve the concession of regular bail.

(5) Learned counsel for the petitioner, in rebuttal to the said argument, has relied upon the judgment of Hon'ble Supreme Court in *Maulana Mohd. Amir Rashadi versus State of U.P. and another*¹ to contend that the facts and circumstances of the present case are to be seen while deciding a bail application and the bail application of the petitioner cannot be rejected solely on the ground that the petitioner is involved in other cases. The relevant portion of the said judgment is reproduced hereinbelow:-

“As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court

¹ 2012 (2) SCC 382

to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from *the jurisdiction of the Court etc.*”

(6) This Court has heard learned counsel for the parties and has gone through the paper-book.

(7) In the present case, the petitioner was not named in the secret information and the recovery of 295 grams of intoxicant powder was not effected from him. The petitioner was arrested on the basis of the disclosure statement of Lakhvir Singh, who had also not stated that it was the petitioner from whom Lakhvir Singh and other co-accused had purchased and rather, their statements as recorded in paragraph 6 of the order rejecting bail to the petitioner were to the effect that they used to purchase intoxicant material from co-accused/non-applicants, namely, Jaswinder Singh @ Bablu, Gurpreet Singh @ Ghunda and Rajvir Singh @ Deol. The question as to whether the petitioner could also be implicated with respect to recovery of 295 grams of intoxicant powder, would be a matter of debate, which would be adjudicated during the course of the trial. The recovery from the petitioner is of 35 grams of intoxicant powder and the same is far less than the stipulated commercial quantity of 250 grams. Further, co-accused of the petitioner, namely, Sarban Singh @ Sarwan Kumar, has already been granted the concession of regular bail by this Court, vide order dated 02.12.2021 passed in CRM-M-49251-2021. The petitioner has been in custody since 15.07.2021 and there are 16 prosecution witnesses, none of whom have been examined, thus, the trial is likely to take time.

(8) Keeping in view the above-said facts and circumstances and the law laid down in *Maulana's case (supra)*, the present petition is allowed and the petitioner is directed to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate and subject to him not being required in any other case. The petitioner shall also abide by the following conditions:-

1. The petitioner will not tamper with the evidence during the trial.
2. The petitioner will not pressurize/intimidate the prosecution witness(s).
3. The petitioner will appear before the trial Court on the date fixed, unless personal presence is exempted.

4. The petitioner shall not commit an offence similar to the offence of which he is accused of, or for commission of which he is suspected.

5. The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

(9) In case of breach of any of the above conditions, the prosecution shall be at liberty to move an application for cancellation of bail before this Court.

(10) However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial Court would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

Ritambra Rishi