

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-10657-2015 (O&M)
Date of Decision: 07.10.2015

Dev Raj @ Dev Behal

... Petitioner

vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR.JUSTICE P.B. BAJANTHRI

- 1. Whether Reporters of local papers may be allowed to see the judgment?*
- 2. To be referred to the Reporters or not?*
- 3. Whether the judgment should be reported in the Digest?*

Present: Mr. Vikram Chaudhri, Senior Advocate with
 Mr. Harshit Sethi, Advocate for the petitioner

Ms. Reeta Kohli, Addl. AG Punjab with
 Mr. Vaibhav Sharma, DAG Punjab

Surya Kant, J.

(1) The petitioner seeks his enlargement on bail in FIR No.69 dated 16.04.2013 registered u/S 22/25/27A/29/61/85 of NDPS Act, 420,467,468,471 IPC at Police State Fatehgarh Sahib.

(2) As per the allegations contained in the FIR, the police party led by Inspector Davinder Kumar was patrolling near T-point, in the area of Saddo Majra, District Fatehgarh Sahib. A Qualis vehicle of white colour bearing Regd. No.PB-05-K-7070 came from the side of Village Kotla Bhai, which was stopped at the barrier. It was being driven by a young man who disclosed his name as Davinder Singh @ Happy s/o Baljit Singh. Search was conducted and 8½ kg ephedrine was recovered from a polythene envelope lying in the trunk of the vehicle. Davinder Singh was arrested and during interrogation, some more incriminating material was recovered

from him. Davinder Singh @ Happy revealed that he was in fact driver of Jagdish Singh @ Bhola who is alleged to be the kingpin of drug-mafia. Jagdish Singh @ Bhola was also later on arrested and during his interrogation on 03.12.2013, the name of the petitioner surfaced as Bhola is said to have disclosed that the petitioner was a partner in the business of illicit drugs with Gurjit Kumar Gabba s/o Chuni Lal Gabba in the latter's factory 'Med Care Remedies P.Ltd.' at Una (HP). It was further revealed that "the petitioner was one of the active associate with...(Jagdish Singh @ Bhola) and other gang members...and he is also one of the member of international drug cartel".

(3) The petitioner was arrested on 05.12.2013. He is said to have made a disclosure statement on 06.12.2013 and allegedly got recovered 30kg pseudoephedrine which is a controlled substance and a major precursor to manufacture the synthetic drugs like Methamphetamine (ICE).

(4) The petitioner earlier moved the Special Court and then this Court through CRM-M-11816-2014 for the grant of regular bail but the same was dismissed on 17.12.2014 observing that even if Section 37 of the NDPS Act was inapplicable, yet the heavy recovery of 'controlled substance' and the fact that due procedure was allegedly followed, did not justify the release of petitioner on bail.

(5) The petitioner as well as some other suspects against whom Punjab Police had registered cases under the NDPS Act after it claims to have busted the network of organized cartels, approached the Hon'ble Supreme Court mainly seeking their release on bail. Those petitions were

disposed of vide order dated 17.03.2015 relegating the aggrieved parties to approach the Division Bench of this Court before whom the writ petitions filed in PIL jurisdiction or other connected matters are listed.

(6) The petitioner seeks his release on bail on the grounds, *inter alia*:-

- (i) His name does not find mention in the FIR and he was suddenly implicated after about 8 months of its registration;
- (ii) The petitioner was not found in 'conscious possession' of synthetic drug or a contraband;
- (iii) The petitioner has been falsely implicated on the basis of alleged confessional statement of a co-accused which is inadmissible in evidence;
- (iv) The alleged disclosure statement made by the petitioner also lacks legal sanctity. In any case, the alleged recovery of controlled substance pursuant to such statement does not attract Section 37 of the NDPS Act;
- (v) Petitioner has been falsely implicated after he was abducted by the Punjab Police from his residence at Delhi without informing or associating Delhi Police. The incident was thereafter immediately reported to Delhi Police.
- (vi) The petitioner has never been implicated in any NDPS case;
- (vii) The petitioner is a respectable businessman who runs a banquet hall/marriage palace and is an Income Tax assessee;

(viii) The petitioner has already suffered incarceration for almost 2 years and owing to his pitiable health conditions also that he deserves the concession of bail.

(7) Learned Addl.AG Punjab vehemently opposed the petitioner's prayer as according to her, he is an active member of the gang of drug traffickers and is their potential resource person for international linkages. She claimed that the petitioner was also earlier running a drug manufacturing unit and is fully aware of ins-and-outs of the misuse of controlled substances. It was also urged that owing to the recovery of huge quantity of the controlled substance which is a major precursor to manufacture Methamphetamine (ICE), the accusation against the petitioner of committing offence under the NDPS Act is covered within the expansive legislative intentment behind the expression "and also for offences involving commercial quantity" which finds mention in Section 37(1)(b) of the NDPS Act.

(8) Having heard learned counsel for the parties and on consideration of their rival submissions for the limited purpose as to whether or not the petitioner deserves the concession of bail, it appears to us that even in a case where two views are possible, the judicial discretion should tilt towards the liberty of a suspect not only because of the 'bail as a rule or jail as an exception' but also in view of Article 21 of the Constitution which guarantees the one's liberty.

(9) Keeping such preface behind, we are of the considered view that the petitioner deserves the concession of bail for the reasons that – (i) the petitioner is neither found involved in any other case under the NDPS Act

nor has he a track record of involvement under other penal laws; (ii) there is no likelihood of his tampering with the prosecution evidence as the two witnesses of his disclosure statement are police officials only; (iii) the mere recovery of a controlled substance would fall short of attracting Section 37(1)(b)(ii) unless a definite chain to link the culmination of such controlled substance into conversion of a synthetic drug of 'commercial quantity' is established; (iv) the applicability of rigors of the aforesaid provision in the instant case is thus a debatable issue; (v) the allegation of the petitioner as a conduit of 'international cartel' of drug racketeers is truly serious and cannot be overlooked save that the prosecution is able to lay its hands to any such evidence; (vi) no sooner such evidence is recovered, the prosecution would be well within its right to seek the cancellation of bail keeping in view the enormity of the offence; (vii) the petitioner is incarcerated from last about 2 years; (viii) the petitioner's name surfaced only in the alleged confessional statement of Jagdish Singh @ Bhola. The veracity of that statement is yet to be tested by the Special Court; (ix) the trial period is also unpredictable due to involvement of several persons.

(10) For the reasons afore-stated and without expressing any views on merits, we allow this petition and direct to release the petitioner on bail subject to his furnishing bail bonds to the satisfaction of CJM concerned where the petitioner is presently lodged.

(Surya Kant)
Judge

07.10.2015
vishal shonkar

(P.B. Bajanthri)
Judge

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