

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1)

CRM-M-240 of 2015 (O&M)
Date of Decision:18.5.2015

Dalwinder Singh alias Kulla

....Petitioner

Versus

Narcotic Control Bureau, Chandigarh

....Respondent

AND

(2)

CRM-M-572 of 2015 (O&M)

Sahab Singh

....Petitioner

Versus

Narcotic Control Bureau, Chandigarh

....Respondent

CORAM: HON'BLE MS. JUSTICE NAVITA SINGH

Present:

Mr. K.S. Dhaliwal, Advocate for the petitioner in
CRM-M-240 of 2015.Mr. S.S. Narula, Advocate for the petitioner in
CRM-M-572 of 2015.Mr. D.D. Sharma, Advocate for the respondent-
Narcotic Control Bureau, Chandigarh.

Ms. Harpreet Kaur, AAG, Haryana.

NAVITA SINGH, J.

1. Both the above named petitioners have moved for regular bail. The allegations in the FIR were that one Dani Singh son of Chunni Lal was apprehended on 15.6.2014 and was found in possession of 4.950 kilo grams of opium kept in his Swift car and also currency notes worth Rs.5,00,000/- were recovered. The allegations against the petitioner (Sahab Singh) were that he had sold opium to Dani Singh and received Rs.5,00,000/- from him. The petitioner was apprehended on 18.6.2014 i.e. two days after Dani Singh had been apprehended. During interrogation, statement under Section 67 of Narcotic

Drugs and Psychotropic Substances Act (Act for short) was recorded, which was allegedly made by him on 18.6.2014. The petitioner, however, disowned the statement. He was arrested on the disclosure statement of co-accused Dani Singh, which was not admissible.

2. The allegation against the other petitioner Dalwinder Singh alias Kulla was that he had deposited certain amounts on different dates in the bank account of Dani Singh. Information was collected from the bank details of Dani Singh and also from Dani Singh himself. One Bhupinder Singh also joined in the investigation. He is co-brother of Dalwinder Singh petitioner. He gave a mobile number stating that he had given that to Dalwinder Singh. The cell No.9254658400 was being used by present petitioner Dalwinder Singh. CCTV footage from Bank of India, Taraori, District Karnal was obtained from where petitioner was identified by Bhupinder Singh as the person who had deposited money in the account as mentioned above. The petitioner gave his name as Jinder Singh and concealed his actual identity.

3. Counsel for the petitioner Sahab Singh argued that the statements of Dani Singh and of the petitioner under Section 67 of the Act were not admissible and so was the disclosure statement made by Dani Singh against the petitioner. He also pointed out from the notice under Section 67 of the Act Annexure A6 that the same was of 18.6.2014 whereas the petitioner was asked to appear in the Narcotic Control Bureau, Chandigarh (NCB for short) on 16.6.2014. The reply to this argument given by the counsel for NCB is convincing when he said that there was an obvious mistake in the notice because the date given to the petitioner was 18.6.2014 as would be clear from the word 'forthwith' used for direction to petitioner to appear. The mistake is, therefore, ignorable.

4. It was then argued that Dani Singh was arrested on 15.6.2014 when he was found in possession of contraband and statement under Section 67 of the

Act made on 18.6.2014 was not admissible as at that time he was in the custody of the police.

5. Counsel on the other side, however, submitted that Dani Singh was formally arrested on 16.6.2014 and before that, the statement had been recorded.

6. Counsel for the petitioner i.e. Sahab Singh relied on Union of India Vs. Bal Mukund and others (2010) 1 Supreme Court Cases (Crl.) 541 where the Supreme Court held in the facts and circumstances of that case that it was difficult to accept that the statement had been made by the accused although they had not been put under arrest. Reliance was also placed on Noor Aga Vs. State of Punjab and another 2008 (3) RCR (Criminal) 633 where it was held that a retracted confession was a weak evidence. It was held by the Supreme Court in Haricharan Kurmi Vs. State of Bihar 1964 AIR (SC) 1184 that confession of the co-accused could not be treated as a substantive evidence. However, reading of the same judgment, further would show that it was also observed that it could not be treated as substantive evidence but could be pressed into service only when the court was inclined to accept other evidence and felt the necessity of seeking an assurance in support of its conclusion. Such confession, therefore, cannot be thrown away out-rightly.

7. Counsel for the NCB relied on Union of India Vs. Rattan Malik alias Habul 2009 (1) RCR (Criminal) 938 where the Supreme Court set aside the order of the High Court regarding suspension of sentence holding that bail could be granted during pendency of the appeal only in compliance with the provision of Section 37 of the Act and the conditions for that were the satisfaction of the court that there were reasonable grounds for believing that the accused was not guilty of the alleged offence and that he was not likely to commit any offence while on bail.

8. In the present case, massive quantity of opium was recovered from Dani Singh, who was dealing in the sale and purchase of the same and the phone records produced by the NCB show that he was in constant touch with the petitioners. Petitioner Sahab Singh was being contacted by Dani Singh on different mobile phones, which would mean that he was changing his number frequently. Both the petitioners were in contact with principal accused Dani Singh and sometimes there were more than one calls on one day and the call list shows that duration of the calls was between more than seven minutes and more than twenty minutes. The calls were not few and far between. There was regular conversation on phone between Dani Singh and petitioners.

9. Counsel for the petitioner Dalwinder Singh argued that it was observed in order dated 19.2.2015 that the material gathered against the petitioner at best showed that he committed an offence under Section 29 of the Act and counsel for NCB was required to show the culpability of the petitioner beyond that charge. Charge has already been framed against the said petitioner under Section 29 of the Act for abetment and criminal conspiracy.

10. Counsel for NCB submitted that the trial Court was being moved for amendment of charges and request was being made for adding the charge under Section 27 of the Act along with other sections.

11. Since the offence committed was of a grave nature and a huge quantity of contraband was recovered, even if it be taken that petitioner Dalwinder Singh had a prima facie liability only under Section 29 of the Act, yet it is felt that it would not be in the interest of justice to release him on bail on account of his association with Dani Singh.

12. The exceptions given in Section 37 of the Act would not come into play here as there are no reasonable grounds for believing at this stage that the

petitioners are not guilty of the offences prima facie made out against them and that they are not likely to commit any offence while on bail.

13. Both the petitions are dismissed.

(NAVITA SINGH)
JUDGE

18.5.2015
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