

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CRM-M-31036-2014

Date of decision : 18.02.2015

Gurnam Singh alias Gagan

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr.Vipul Jindal, Advocate
for the petitioner.

Mr.Gurinder Jeet Singh, DAG, Punjab.

REKHA MITTAL, J.

The petitioner prays for grant of regular bail in FIR No.100 dated 14.08.2013 for offence punishable under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for brevity 'the Act') registered in Police Station Sarhali, District Tarn Taran.

As per allegations set up in the FIR, a secret information was received by the police party headed by Inderjit Singh Inspector, Incharge CIA Staff Tarn Taran that Gurnam Singh @ Gagan son of Surjan Singh (petitioner), Hanspreet Singh @ Hans and Sukhdev Singh, non-applicants had formed a gang for selling intoxicating substances. They are coming with huge quantity of heroin in Indica Vista Car No.PB-10-DP1531 from Harike towards Amritsar and can be caught. Ruqa was sent to the police station on the basis whereof, FIR was registered. DSP(D) Tarn Taran Sh.Jaswant Singh was telephonically informed. Naka was laid to nab the culprits and

the aforesaid car was intercepted. The aforesaid three persons were sitting in the car and after compliance with the provisions of Section 50 of the Act, search of Gurnam Singh led to recovery of 330 grams of heroin from right pocket of the pants worn by him. Separate recoveries are effected from the co-accused Hanspreet Singh and Sukhdev Singh and details thereof are not relevant for disposal of the present petition.

Counsel for the petitioner contends that alleged recovery was effected from personal search of the accused and the provisions of Section 50 of the Act have not been complied with. For this purpose, it is argued that DSP Jaswant Singh, a gazetted officer was already part of raiding team.

The entire investigation from receipt of secret information till finalisation of the investigation was conducted by Inspector Inderjit Singh and thus investigation is ex facie unfair. In support of his contention, he has referred to *State by Inspector of Police, Narcotic Intelligence Bureau, Madurai, Tamil Nadu Vs. Rajangam, 2010(15 SCC 369*.

Counsel has submitted that there is clear violation of the provisions of Section 42 of the Act. Further dilating, it is argued that secret information was received at 5.30 PM on 14.08.2013, alleged recovery was made on 15.08.2013 at about 11 AM but despite there being gap of more than 17 hours, no written communication was sent to the senior officer(s) as required under Section 42 of the Act. For this purpose, he has relied upon judgment of Hon'ble the Supreme Court of India *Kishan Chand Vs. State of Haryana, 2013(2) SCC 502* and *State of Karnatka Vs. Dondusa Namasa Baddi, 2010 (12) SCC 495*.

Another submission made by counsel is that the alleged

recovery of 350 grams of heroin is marginally higher than non-commercial quantity, thus, the petitioner may be released on bail pending disposal of trial which is likely to take its own time as the petitioner is in custody since 14.08.2013. The last submission made by counsel is that provisions of Section 37 of the Act are required to be construed in a pragmatic manner as has been held by Hon'ble the Supreme Court of India in *Ranjitsing Brahmajeetsing Sharma vs. State of maharashtra & another, 2005(5) SCC 294*.

Counsel for the State has opposed the prayer for bail with the submissions that there is due compliance with the mandatory provisions of the Act. As the petitioner was found in possession of commercial quantity of heroin, in view of stringent provisions of Section 37 of the Act, his prayer for grant of bail has been rightly rejected by the Judge, Special Court, Tarn Taran.

I have heard counsel for the parties and perused the records.

It is appropriate to mention at the outset that while disposing of the petition for bail, invariably, Courts avoid to touch merits of the controversy so that no prejudice is caused to either of the parties during trial. However, as the petitioner has raised certain issues, it has become necessary to advert to those contentions, may be, briefly.

As per case of the prosecution, DSP Jaswant Singh was informed telephonically to come to the spot after secret information was received and ruqa was sent to the police for registration of the FIR. As Jaswant Singh DSP arrived at the spot and was informed about the secret information, it is sufficient compliance with the provisions of Section 42 of

the Act. This apart, in view of amendment in Section 42 of the Act such an information is to be sent by the Investigating Officer within a period of 72 hours. It is not plea of the petitioner that copies of FIR / special reports were not received by the concerned Illaqa Magistrate and / or superior officers within 72 hours from the time of receipt of information.

Sh.Jaswant Singh, Deputy Superintendent of Police is a gazetted officer of the police department. The said officer apprised the accused of his right to be searched before him, another gazetted officer or a Magistrate but the accused reposed confidence in the Deputy Superintendent of Police in view of consent memo Annexure P3/D. In this view of the matter, I find myself unable to accept contention of the petitioner that there is violation of the provisions of Section 50 of the Act.

Indisputably, the secret information was received by Inspector Inderjit Singh and he is the investigating officer in the case. In *State by Inspector of Police, Narcotic Intelligence Bureau, Madurai, Tamil Nadu's case (supra)*, Hon'ble the Supreme Court relied upon the judgment of *Megha Singh Vs. State of Haryana, 1997 SCC (Crl.) 267* wherein the Court had taken the view that officer who arrested the accused should not have proceeded with the investigation of the case so that there may not be any occasion to suspect fair and impartial investigation. In the referred authority, Hon'ble the Supreme Court examined correctness and legality of judgment of acquittal passed by the High Court while accepting the appeal of the convict. However, Hon'ble the Supreme Court in *S.Jeevanantham vs. State through Inspector of Police, TN, 2004(3) RCR (Criminal) 333* after adverting to its decision in *Megha Singh's case (supra)* has upheld

conviction of the accused by the Special Judge and affirmed by this Court with the observation that the investigating officer was not in any way personally interested in the case and the Court is unable to find any sort of bias in process of investigation. Counsel for the petitioner has failed to point out if any prejudice has been caused to the accused because of investigation being conducted by the officer who received secret information in his official capacity, sent ruqa for registration of the case and later conducted investigation and filed charge sheet. In this view of the matter, I am unable to accept submission of the petitioner that he is entitled to bail on this score.

The plea of the petitioner that alleged recovery of 330 grams of heroin is marginally more than non-commercial quantity is mis-conceived and liable to be rejected. The commercial quantity in case of heroin starts from more than 250 grams.

The accused has a right of speedy trial but the mere fact that the accused is in custody for the past 1 year and about 6 months itself is not sufficient to entitle him to be released on bail particularly in the circumstances that under Section 37 of the Act, bail can be granted only if the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail. Counsel for the petitioner has failed to point out any such materials on record on the basis whereof such a satisfaction that the petitioner is not guilty of offence charged against him can be validly recorded.

In view of what has been has discussed hereinabove, finding no merit, the petition is dismissed. Any observations made by this Court would

be confined to disposal of present petition and shall not be taken as an expression of opinion on merits of the controversy by the trial Court. The trial Court is directed to expedite conclusion of prosecution evidence.

(REKHA MITTAL)
JUDGE

February 18, 2015.

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