

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-37924-2014

Date of decision: 24.03.2015

Swaran Singh

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE R.P. NAGRATH

1. *Whether Reporters of the 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. Vijay K. Jindal, Advocate for the petitioner.

Mr. Gurveer Sidhu, AAG, Punjab.

R.P. NAGRATH, J.

Affidavit of SI Harbhej Singh in deference to the order dated 23.02.2015 has been filed. He has apologized for making wrong submissions to this Court with regard to number of witnesses who were examined in the matter which was clarified when he checked the record at the station.

2. In view of the aforesaid undertaking, the same is accepted.
3. Reply by way of affidavit of Sucha Singh PPS/DSP, Police State Special Operation Cell, Amritsar has also been filed and it is informed that evidence of the prosecution stands closed on 17.03.2015 and with regard to incorrect information given by SI Harbej Singh, the

matter is being enquired into by the local police.

4. This petition under Section 439 Cr.P.C. has been filed by the petitioner in FIR No. 29 dated 06.12.2011 registered under Sections 21/25/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the 1985 Act') and Sections 420/468/471/120-B of the Indian Penal Code (IPC) at Police Station State Special Operation Cell (SSOC), Amritsar.

5. I have heard learned counsel for the petitioner and learned State counsel, at considerable length and also carefully perused the paper-book.

6. Learned counsel for the petitioner vehemently contended that the petitioner is in custody since 6.12.2011 i.e. for the past about 3 years and 3 months. It further contended that two of the co-accused, namely; Paramdeep Singh @ Raja and Gagandeep Singh, were granted regular bail by this Court vide order dated 11.05.2012 (Annexure P-12) passed in CRM-M-11889-2012.

7. On the other hand, learned State counsel vehemently opposed the prayer made in the instant petition on the ground that heavy quantity of heroin is involved in this case, therefore, the petitioner does not deserve to be released on bail especially when all the prosecution witnesses have since been examined.

8. The version of prosecution briefly stated is that Inspector Harvinder Pal Singh posted in Police Station State Special Operation Cell, Amritsar received a secret information against the petitioner to the effect that petitioner is involved in many cases of drugs smuggling and

was arrested even earlier. Presently, he was out of jail on bail and got himself admitted in Guru Nank Dev Hospital, Amritsar in Special Ward on the excuse of some disease. The exact information was that during his admission in the hospital, the petitioner is establishing contacts with cross-border smugglers and that Mukhtiar Singh @ Makha and Sukhwant Singh @ Sukha are also his associates. The information received was that latter two persons will come to the Guru Nanak Hospital on a motorbike make Hero Honda Super Splender for taking huge consignment of heroin from Swaran Singh. The information was passed on to the senior officers and raid was conducted. Two of the accomplices were apprehended who came on a motorbike and recovery of 3 kgs of heroin was made after completing the formalities which are required under the various provisions of the 1985 Act like apprising the accused of the right to be searched before a Gazetted Officer or a Magistrate. After making search of these two persons, the police party then went to the Special Ward of the hospital where the petitioner was admitted and after taking opinion from the doctor to the effect that petitioner was fit to be joined in any kind of investigation and enquiry, the petitioner was told about the information and search before the senior police officer. On search of the room, 1 kg of heroin was recovered from the possession of petitioner from the pillow side of his bed in the ward.

9. The grounds taken in the bail application were that on various dates accused was not produced but now it is not disputed and also as per affidavit of Sucha Singh, PPS/DSP, Police Station SSOC, Amritsar, that the prosecution evidence has since been closed on

17.03.2015 and out of 18 witnesses 9 were examined and 9 were given up. Under these circumstances, therefore, the petitioner cannot be released on bail because of the specific bar contained in Section 37 of the 1985 Act.

10. Learned petitioner's counsel mainly relied upon **State of Uttranchal Vs. Rajesh Kumar Gupta, 2007 (1) SCC 355**. That was a case for keeping in possession the controlled drugs. The High Court had allowed the bail application and the order of High Court was challenged by the State of Uttranchal on the ground that Section 37 of the 1985 Act does not permit the grant of bail in a recovery of narcotic drugs which is of commercial quantity. The Hon'ble Supreme Court held that a person cannot be denied the right of being released on bail unless a clear case of application of the 1985 Act is made out. So, the ratio of this judgment cannot help the petitioner as in this case there is no scope of contending that provisions of the 1985 Act are not attracted. The Hon'ble Supreme Court further held that respondent might have committed an offence which repulses out morality. He may ultimately be found guilty even for commission of an offence under the 1985 Act, but in a case of this nature when *prima facie* the provisions of the said Act are not found applicable particularly in view of the fact that he has been in custody for a period of more than two years now, Hon'ble Supreme Court observed that it should not exercise its discretionary jurisdiction under Article 136 of the Constitution of India. So the ratio of that judgment is not at all helpful to the petitioner.

11. The facts of **Rajesh Kumar Gupta's case (supra)**, were that

respondent-accused admittedly was in possession of an Ayurveda Shastri degree. It is stated that by reason of a notification issued by the State of Uttar Pradesh dated 24.02.2003, the practitioners of Ayurvedic system of medicines were authorised to prescribe allopathic medicines also. The respondent in that case was running a clinic commonly known as 'Neeraj Clinic' and said to be assisted by eight other medical practitioners being Allopathic and Ayurvedic doctors. It was also not in dispute that only seven medicines were seized and they are mentioned in Schedules G and H of the Drugs and Cosmetics Act. The Hon'ble Supreme Court observed that some of the drugs recovered do not find place in Schedule I appended to the 1985 Rules, the provisions of Section 8 of the 1985 Act would have no application whatsoever. It was further held that Section 8 of the 1985 Act contains a prohibitory clause, violation whereof leads to penal offences thereunder.

12. Learned counsel for the petitioner also relied upon **State of Kerala Vs. Raneef, 2011 (1) SCC 784**, which was a case under Unlawful Activities (Prevention) Act, 1967. The State of Kerala had challenged the bail granted to the respondent in that case before Hon'ble the Supreme Court. The Hon'ble Supreme Court observed as under:-

“12. (1) to (3) xxx xxx xxx
(4) In deciding bail applications an important
factor which should certainly be taken into
consideration by the Court is the delay in concluding
the trial. Often this takes several years, and if the
accused is denied bail but is ultimately acquitted, who

will restore so many years of his life spent in custody?

Is Article 21 of the Constitution, which is the most basic of all the fundamental rights in our Constitution, not violated in such a case? Of course this is not the only factor, but it is certainly one of the important factors in deciding whether to grant bail.”

13. In view of the discussion made above, I find no merit in the instant petition and the same is dismissed.

March 24, 2015
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(R.P. NAGRATH)
JUDGE