

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-21895-2016
Decided on: 21.10.2016

Sudesh alias Baba

.... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR.JUSTICE A.B.CHAUDHARI

Present: Mr. R.P. Dhir, Advocate,
for the petitioner.

Ms. Tanushree Gupta, DAG Haryana.

A.B. Chaudhari, J (Oral)

Heard learned counsel for the rival parties.

The prosecution has filed additional reply in the present case.

I quote, paragraph 3 and 4 therefrom which reads thus:-

“3. That on 25.1.2016 Gurdeep Ex-Sarpacnh son of Santa Singh R/o Village Basera P.S. Samalkha Distt. Panipat was joined in the investigation who had got recorded in the statement that on 22/23.1.2015 night he had heard that poppy husk and opium has been recovered from the house of the petitioner. Thereafter, Uncle of Jonus Masih alias Tinnu namely Nehat Masih had can at his house and had stated that his Nephew driver has been apprehended by the police, hence on his request I along with Nehat Masih reached at the gate of CIA to Panipat where Kulvinder Kaur mother of the petitioner met him and she had told that you may go your house all had been settled, Rs.30 lacs has been given and remaining Rs.10 lacs will be given later on. Thereafter, we all went to our house. After two days Kulvinder Kaur had taken me to CIA Staff Panipat to fetch the articles of his son/petitioner such as watch, chain and purse etc. The police officials had offered tea to her, on which she had refused to take tea and had stated that the police officials namely Devender, Krishan, Naresh and Jaiveer accused had taken an amount of Rs.30 lacs from her and they had also challaned her children/issues. It is also pertinent to mention here that on 13.2.2016 Dalbir Singh Ex. Sarpanch of

village Bilaspur was also joined in the investigation and he got recorded his statement in which he had stated that on 23.12.2015 night, Gorkahpal DSP Samalkha was present in village and one Truck was also parked there. DSP Samalkha was enquiring the matter. On 15.2.2016, EASI Rajinder Kumar Driver of PCR No.15 was also joined in the investigation and he had got recorded his statement that on 22.12.2015 night, EASI Jai Bhagwan and he himself were present in village Hathwala in the mean time they received a V.T. message that they may talk to telephone no. 7056000112. The Incharge of PCR EASI jai Bhagwan had talked on the above said number and had disclosed that SI Jaiveer CIA 2nd Panipat had summoned/called them in village Basera, on which they reached at the Phirni/Outer boundary of village Basera, where SI Jaiveer, ASI Krishan, ASI Naresh/accused, Driver EHC Mahipal and two constables were found present. Jonus alias Tinnu co accused of the petitioner was also with them they had got opened the house of the petitioner, where he was found present and 54 bags of poppy husk and one Jaw containing opium was recovered. The above said contravened was loaded in a Canter and the above police officials/accused had taken them (Jonus Masih alias Tinnu and the petitioner) to CIA Panipat. On the very same day and time EASI jai Bhagwan had also got recorded his statement U/S 161 of Cr.P.C. of the same footing of ASI Rajinder Kumar as stated above.

4. That on 27.2.2016, Kamaljeet Kaur wife of the petitioner was joined the investigation of the present case and she had got recorded her statement U/S 161 of Cr.P.C. that on 22.12.2015 night, the police had brought Jonus Masih alias Tinnu and Sonu son-in-law of the petitioner and the police officials had taken 54 bags of poppy husk and 3 Kg. opium in a jar and the police officials had also apprehended her husband petitioner in a Canter. On 23.12.2015, she herself and her mother-in-law Kulvinder Kaur had gone to CIA 2nd Panipat to see the petitioner where, the above said four police officials/accused had got met her husband and the police officials/accused had also asked to arrange an amount of Rs.40 lacs and they will not involve her husband/petitioner Sudesh alias Baba and they will not show the recovery from their house they will also spare their son in law Sonu and their Innova Car. On it they agree with this offer. Thereafter, on 23.12.15, they had arranged Rs.5 lacs from Sanjeev son of Shri Prem Chand R/o Gannaur, Rs.10 lacs from Joginder son of Shri Surat Singh R/o Transport Truck Union, Rs.10 lacs from one Foji of village Mahawati and they had arrange of Rs. 5 lacs from her house. On the same day at about 5/6 P.M. they had handed over the above said amount i.e. Rs. 30 lacs to accused Jaiveer, Devender, Naresh Kumar and Krishan Kumar police officials in a room and they had also stated that you may not disclose this fact to any one and also to arrange the remaining amount of Rs.10 lacs without any delay. On the next day, she and her mother-in-law Kulvinder Kaur

came to know that the present case has come into the notice of Higher Authorities, on it I and my mother in law had left our house after locking the same. After some time, we met my husband Suedesh alias Baba petitioner and he had stated that they had given an amount of Rs.30 lacs. Thereafter the police officials had also challaned them so you may disclosed the true facts to the police. Thereafter, on 14.3.2016 Kulvinder Kaur wife of Jagat Ram mother of the petitioner had also met the I.O, of the present case, deponent the then DSP City Panipat and she had also got recorded her statement on the same footing of Kamaljeet Kaur wife of the petitioner”.

Learned counsel for the State vehemently opposed the application for grant of regular bail but fairly states that there is no other criminal offence or FIR against the petitioner.

However, she contended that the petitioner is in the business of the smuggling of contraband and according to her as a matter of fact as stated in the aforesaid paragraph of the additional reply, huge quantity of contraband was recovered from the residence of the petitioner.

The counsel for the State however submits that the police officials, who had seized the contraband from the residence of the petitioner, ultimately, joined hands with the petitioner upon accepting huge bribes and did not make any contemporaneous record of recovery as required by law.

That is why according to her, the police officials are being prosecuted independently by the department.

The counsel for the State, however, submits that the petitioner is a main person, who has been dealing in contraband. She prayed for dismissal of petition.

The petitioner was arrested on 13.01.2016 in FIR No. 766 dated 24.12.2015 registered under Sections 201, 203, 212, 213, 214, 217, 218, 342, 385-IPC and 15, 17, 18, 27-A, 29 of NDPS Act, at police station

Samalkha and is in jail since then. Admittedly, challan has been filed.

Even if the contention raised by learned counsel for the State about the entire saga regarding police officials joining hands with the petitioner by taking bribe and looking to the proportion in which the contraband was allegedly stored, this Court is under a duty to find out if there is legal evidence against the petitioner for ordering or continuing his further detention pending trial. In the absence of legal evidence against the petitioner, there would be no justification in detaining a person in jail till the trial is completed. It is the case of the prosecution itself that there was a huge seizure of contraband from the house of the petitioner made by the police. But then the police did not show any recovery in accordance with law by making seizure memo for prosecuting the petitioner, nor there is any other evidence at all to that effect.

The contention raised by counsel for the State that police officials are being prosecuted for the acts of bribery and hence petitioner's plea for bail should be turned down is misconceived as this Court finds no legal evidence against the petitioner to deny the regular bail.

In my view, the only evidence alleged by the prosecution is about the recovery of contraband from his house in huge quantity. But then there is absolutely no material at all on record in the form of seizure documents, panchnama or as the case may be.

The same are also not likely to be available because of the police party joining hands with the petitioner as alleged by the prosecution.

To sum up, the petitioner will have to be granted the relief of bail, particularly, when there is no other similar offence alleged against him.

In that view of the matter, I make the following order:-

ORDER

1. CRM No.21895 of 2016 for bail of the petitioner is allowed.
2. Petitioner be released on bail subject to the satisfaction of the Chief Judicial Magistrate/Duty Magistrate concerned on such terms and conditions as would be deemed fit and proper by the Chief Judicial Magistrate/Duty Magistrate.

21.10.2016
Dinesh

(A.B. CHAUDHARI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No