

**214 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM M-24166 of 2016 (O&M)

Decided on: 03.10.2016.

Jatin Salwan

... Petitioner

Versus

State of U.T., Chandigarh

... Respondent

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. Vinod Ghai, Sr. Advocate with
Mr. H.S. Brar, Advocate,
Mr. J.S. Lali, Advocate,
Mr. S.S. Sandhu, Advocate,
for the petitioner.

Mr. Sukant Gupta, Addl. PP for UT Chandigarh
assisted by Mr. Rajiv Sharma, Addl. PP, Chd.

Mr. Anupam Gupta, Sr. Advocate/Amicus Curiae
with Mr. Ashok Kumar, Advocate.

JITENDRA CHAUHAN.J.

By filing this petition, under Section 439 of the Code of Criminal Procedure, the petitioner seeks grant of regular bail in FIR No.83 dated 16.06.2016 registered under Sections 18 and 29 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (for short “the NDPS Act”) and Section 489-C and 120-B IPC at Police Station Maloya, U.T., Chandigarh.

Learned Amicus Curiae submits that the investigation

of the case in hand has been fairly conducted. There is no attempt by the police to frame the petitioner in this case. However, he submits that in law, the only offence which appears to have been made out against the petitioner is under Section 58(2) of the NDPS Act. By no stretch of imagination, the offence under Section 18 *per se* or read with Section 29 of the NDPS Act, or Sections 107 or Section 120-B IPC is made out. For invoking the offence under Section 489-C IPC, there should be clear and cogent evidence which is missing in this case. It is further contended that the term “possession” used in Section 489-C IPC has wide connotation. The possession should be conscious. He further refers to Section 58(2) of the NDPS Act and states that since the offence is punishable with imprisonment upto two years, so, the petitioner deserves the grant of bail.

Mr. Ghai, the learned counsel submits that the petitioner has been falsely implicated in the present case. Except the disclosure statement of co-accused Tarsem Rana recorded under Section 164 of the Code of Criminal Procedure, there is no legal evidence to connect the petitioner with the alleged commission of crime. The offences under Sections 18 and 29 of the NDPS Act and Sections 489-C and Section 120-B IPC are not made out against the petitioner. It is further contended that the challan has already been presented. In the challan except the disclosure statement of the co-accused, there is no evidence indicating the culpability of the petitioner. The petitioner had no knowledge about the planting of

narcotic drugs. Co-accused, Tarsem Rana had been a client of the petitioner and on account of their professional relationship, he had spoken to him on telephone. It is further contended that since the offences under which the challan has been presented are not made out against the petitioner so, his detention amounts to illegal custody for which the prosecution should be penalized.

On the other hand, the learned counsel representing the Union Territory, Chandigarh contends that at this stage, only prima facie case is to be seen. The offences under Sections 18 and 29 of the NDPS Act and Sections 489-C and 120-B IPC are made out against the petitioner. The petitioner is very much involved in the commission of crime.

While refuting the submissions made by the learned Amicus Curiae, the learned counsel for the petitioner contends that even, Section 58(2) of the NDPS Act is not attracted in the instant case inasmuch as for invoking Section 58(2), wilful and malicious intent is required whereas, in the instant case, the investigation agency has not collected any evidence to point out that Jatin Salwan had malicious or wilful intent. Mere receiving of call made by client and further making call to somebody does not establish offence under Section 58(2) of the NDPS Act.

It is worth mentioning that vide order dated 19.07.2016, the petitioner had been released on interim bail on medical grounds.

Brief facts of the case of the prosecution as noticed in the order passed by the Additional Sessions Judge are as under:-

“Brief facts of the case of the prosecution are that on 16.6.2016, Inspector Ram Rattan, SHO of Police Station Maloya, Chandigarh along with police party was on patrolling duty in prevention of crime duty in the jurisdiction of Police Station Maloya, UT, Chandigarh when he received a secret information that one person who was carrying opium was coming in a blue coloured Maruti car bearing No.CH01-AE-0224 from Sector 38 West, Chandigarh, whereupon, he along with the police party had arrived there and had apprehended one person namely Bhagwan s/o Narayan Singh, r/o H.No.88, Gali No.4, Vikas Nagar, Naya Gaon, District Mohali. After adopting the legal process, search of his car was carried out in the presence of SDPO South and during search of his car, 2 Kg 600 grams opium which was concealed in between the file, was recovered and besides it 15 bundles of fake currency notes of Rs.1000/- denomination amounting to Rs.14,99,000/- were also recovered from a polythene bag which was also kept hidden in a file cover. A paper cutting having photocopy of a Sikh youth, whereupon words

“Montu” and two mobile numbers 9216888901 and 9814325242, was written, was also recovered. Bhagwan Singh were arrested on the same day and was produced in the Court from where he was remanded to police custody for two days. Thereafter, during investigation, it was found that recovered opium and scanned Indian currency notes were planted in the car of Bhagwan Singh in order to implicate him along with his employer Sukhbir Singh in a false case by some unknown persons and on further investigation, it was revealed that Sukhbir Singh Shergill was having old enmity with some persons of their organization and on account of this reason, a conspiracy was hatched to falsely implicate them in some criminal case. On 1.7.2016, accused Jatin Salwan was arrested, whereas on 2.7.2016 accused Narender Singh s/o Aatma Singh, r/o 422, Phase-I, Urban Estate, focal Point, Ludhiana was arrested. On 6.7.2016, accused Navjot Singh Dhaliwal was also arrested in this case from Delhi and besides them, on 11.7.2016 accused Lovepreet Kaur w/o Jasbir Singh, r/o H.No.34-C, Sector 125, Old Sunny Enclave, Kharar, Distt. Mohali who had placed the opium and had placed scanned Indian

currency notes in the car of Bhagwan Singh was also arrested from Village Charnawala Distt. Bikaner (Rajasthan). She was produced before the Court and was remanded to police custody for three days and besides it, accused Kuldeep Singh @ Raj s/o Teja Singh, r/o Village Khan Singh Wala, PS Guruharshai Distt. Ferozepur was also arrested as he had introduced the drug supplier to Narender Singh and Lovepreet Kaur and they all were in custody. During investigation, Tarsem Rana who is retired Inspector from the police had made a statement in the Court of learned Illaqa Magistrate under Section 164 Cr.P.C, wherein, it had been maintained by him that one Advocate namely Jatin Salwn had implicated Bhagwan Singh along with his owner Sukhbir Singh Shergill in the present criminal case in connivance with one Narender Singh and he had been asked to inform the police party by these persons so that Bhagwan Singh was arrested along with opium and fake currency.”

I have heard the learned counsel for the parties and have gone through the case file.

The rival contentions of the parties that whether offences under Sections 18 and 29 of the NDPS Act and Section 489-C

and 120-B IPC are made out or not cannot be gone into at this stage.

Hon'ble the Supreme Court in *"Kumari Suman Pandey Vs. State of Uttar Pradesh and another 2007(2) RCR (Criminal) 65"* held as under:-

“10. Even on a cursory perusal the High Court's order shows complete non-application of mind. Though detailed examination of the evidence and elaborate documentation of the merits of the case is to be avoided by the Court while passing orders on bail application, yet a court dealing with the bail application should be satisfied as to whether there is a prima facie case, but exhaustive exploration of the merits of the case is not necessary. The court dealing with the application for bail is required to exercise its discretion in a judicious manner and not as a matter of course.”

In view of the dictum of law enunciated by Hon'ble the

Supreme Court, this court will restrain itself from giving a finding on the merits of the case lest it may prejudice the case of either party before the trial Court. From the material placed on record, prima facie, it appears that the commission of offence under Section 58(2) of the NDPS Act is made out. Keeping in view the fact that the petitioner is an Advocate and is a respectable member of the society; challan already stands presented; nothing is to be recovered from the petitioner; apart from the instant case, no other case is pending against the petitioner; this court feels that it will be in the interest of justice if the instant petition is allowed. It is ordered accordingly. Consequently, the interim bail granted to the petitioner vide order dated 19.07.2016 is made absolute, though on different grounds, on furnishing of fresh bail bonds and surety bonds to the satisfaction of the trial Court.

The petition is allowed.

Anything said herein above shall not be construed as
an expression of opinion on the merits of the case.

03.10.2016.
SN

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No