

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

CRM-M-24151-2017(O&M)

Date of decision: 19.07.2017

Harnand Singh

...Petitioner

Versus

State of Punjab

...Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. R.S.Rai, Sr. Advocate with
Mr. Karan Pathak, Advocate
for the petitioner.

Mr. Kirat Singh Sidhu, DAG, Punjab.

ARVIND SINGH SANGWAN, J. (ORAL)

The petitioner is seeking pre-arrest bail in case FIR No.33 dated 09.03.2016, under Sections 15, 61, 85 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') registered at police Station Chhajali, District Sangrur.

It is submitted on behalf of the petitioner that the petitioner was initially arrested on 09.03.2016 and was released from the custody till further order vide order dated 01.08.2016 passed by the trial Court on an application given by the prosecution that on the basis of an inquiry conducted by S.P.(D) Sangrur, the petitioner was found to be innocent. Later on, the police has submitted the challan under section 173 Cr.P.C. and the petitioner was placed in column No.2 on the basis of the inquiry report. Learned Senior counsel for the petitioner has referred to the operative part of the challan under Section 173 Cr.P.C., which reads as under:-

“ Thereafter upon my inquiry and from the investigation of the case it is submitted that upon filing of application by Jasveer Kaur W/o Harnand Singh S/o Rachhpal Singh Caste

Jatt R/o House No. 6768 Gali No.1, Punjab Enclave, Near Lohara Bridge, Ludhiana has been found innocent in case Number 33 dated 09.03.2016 under Section 15/61/85 of NDPS Act P.S.Chhajli, Case Number 23 dated 24.02.2016 under Sections 15/61/85 of NDPS Act P.S. Sadar Ahmadgarh. Therefore, Harnand Singh is to be released from Judicial Custody in above mentioned both the cases and accused in case number 23/16 Police Station Ahmadgarh namely Paramjit Singh who was actual Car Driver is to be traced and to be arrested. If approved then appropriate orders may be issued to Station House Officer, Chhajli and Station House Officer Police Station Sadar Ahmedgarh. Upon the investigation report worthy S.S.P. Mentioned "Allowed". And appended his signatures. Accused persons Harbhajan Singh alias Teja S/o Balbir Singh, Barjesh Jatav S/o Ram Sarup, Sonu S/o Sunny, Paramjit Singh S/o Baj Singh in their statements and during interrogation conducted by Sh. Jaskaranjit Singh Teja SP have revealed that they have not seen now nor earlier Harnand Singh S/o Rachhpal Singh Caste Jat R/o Lohara, District Ludhiana nor they know Harnand Singh, nor had they any conversation with Harnand Singh ever. The day when the Police arrested them Harnand Singh reached the spot at later stage, in this regard all the accused persons have recorded their statements before Respectable S.P. Under Section 175 Cr.P.C. which are annexed with the inquiry report. Apart from that Phone location of Harnand Singh was also not at the place of occurrence. Paramjit Singh brought Harnand Singh on the pretext of paying obeisance, who have also admitted during entire investigation and before S.P. Sir in his written statement that he accompanied Harnand Singh on the pretext of paying obeisance because he cannot drive Car, he himself is handicapped. Apart from that Harnand Singh Graduate B. Com from Khalsa College Amritsar and is educated person and is verified doing a job. His past record has also verified as good. On the basis of which Respectable S.P. has declared

Harnand Singh as innocent. That before the Hon'ble Court myself Insp. moved an application regarding Harnand Singh being innocent in the present case and prayed for discharging him, on the basis of which Hon'ble Court has discharged Harnand Singh in the present case on dated 01.08.2016."

Learned Senior counsel for the petitioner has submitted that the petitioner was found innocent and therefore, recovery of 30 Kgs of poppy husk was not proved to be recovered from him. It is further submitted that now, the prosecution has moved an application under Section 319 Cr.P.C., dated 05.05.2017 and has prayed for summoning the petitioner as an additional accused on the basis of the statement of PW-1 HC- Mukhtiar Singh and PW-2 ASI Baljinder Singh. The trial Court, vide order dated 30.05.2017 has summoned the petitioner to face the trial and as such, the petitioner has filed the present petition seeking pre-arrest bail.

In support of this contention, learned counsel for the petitioner has referred to the order dated 27.08.2015 passed in CRM-M-13332 of 2015 titled as "Suman Bala Vs. State of Punjab" and CRM-M-16612 of 2015 titled as "Sohan Lal @ Kala and another vs. State of Punjab" to argue that where the involvement of the accused is doubtful, he is entitled to anticipatory bail even in the NDPS Act. Learned senior counsel for the petitioner has also relied upon the judgments of this Court in **2004(4) R.C.R. (Criminal) 505 Darshan Singh alias Darshi Vs. State of Punjab;** **2013(7) R.C.R.(Criminal) 924 Puran Singh Vs. State of Punjab;** and **2014 (40) R.C.R. (Criminal) 98 Sukha Vs. State of Punjab** **2002(2) R.C.R. (Criminal) 832 Sulakhan Vs. State of Punjab;** **2014 (45) R.C.R. (Criminal) 943 Ajay Kumar Vs. State of Haryana** to submit that once the petitioner was arrested and later on, in an inquiry, he was found to be

innocent and released by the trial Court on the application of the prosecution itself, coupled with the fact that the petitioner is kept in column No.2 in the report filed under Section 173 Cr.P.C., therefore, the custodial interrogation of the petitioner is not required as the police has already been recovered the contraband.

The prayer made by the petitioner is opposed by learned counsel for the State on the ground that the total recovery in the case is of commercial quantity and 4 other co-accused have already been arrested, out of which, 3 have been granted regular bail. It is further submitted by the learned counsel for the State that the petitioner was also involved in another case i.e. FIR No. 23 dated 24.02.2016, registered at Police Station, Ahmedgarh, however, he was also discharged by the Court vide order dated 04.08.2016 in view of inquiry report.

Without commenting on the merits of the case, the petition is allowed and the petitioner is granted concession of anticipatory bail. The petitioner is directed to appear before the trial Court, who will release the petitioner on his furnishing bail bonds/ surety bonds.

However, it is made clear that in case during the pendency of the petition, the petitioner is involved in any other case, it will be open for the prosecution to apply for cancellation of bail.

Accordingly, petition stands disposed of.

(ARVIND SINGH SANGWAN)
JUDGE

19.07.2017
Hemlata

Whether speaking/reasoned
Whether reportable

Yes / No
Yes / No