

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

**CRM-M No.8981 of 2017 (O&M)
Date of Decision: 16.05.2017**

Rasal Singh and another

.....Petitioners

Vs

**Intelligence Officer, Narcotics Control Bureau, Amritsar
....Respondent**

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. P.S. Hundal, Sr. Advocate with
Mr. Dinesh Trehan, Advocate
for the petitioner.

Mr. D.D. Sharma, Advocate
for the respondent.

RAJ MOHAN SINGH, J.

[1]. Petitioners seek grant of regular bail in a NDPS complaint case No.109-A dated 01.08.2016 under Sections 21, 23 & 29 of the NDPS Act pending in the Court of Special Judge, Tarn Taran.

[2]. Brief facts are that the complaint was filed by Intelligence Officer, Narcotics Control Bureau (for short 'the NCB) Amritsar against the petitioners, who are father and son with the allegations that on 04.02.2016, a telephonic message

was received by the Superintendent, NCB, Chandigarh from Coy. Commander, G. Coy, 87 Bn. BSF, Amarkot that the BSF Battalion has apprehended two Indian nationals when they were trying to smuggle suspected items into India by fence and had recovered two pockets containing heroin. On 05.02.2016, NCB team reached the Battalion Headquarter of BSF and associated two witnesses namely S.D. Bahubalendra Head Constable BSF and Sh. Lal Chand Yadav ASI/RO BSF. They disclosed information that on 04.02.2016, between BP No.138/5-6 BSF 87 Bn. they apprehended two Indian nationals when they were trying to smuggle suspected items into India by means of fence throwing and had recovered two packets containing suspected heroin during search. Petitioners were handed over along with two suspected narcotics packets with medical report to the Investigating Officer, NCB.

[3]. As per prosecution story on 04.02.2016 Constable Samir Kr. Chakraborty and Ct. Nageswar Ram of BOP K.S. Wala detailed for first Shift OP Duty from 0600 hrs. to 1200 hrs. to cover area from BP No.137/34 to 138/10. Petitioner No.1 entered gate No.138 on 04.02.2016 at 1012 hrs. with Kissan guard in the presence of Post Commander SI Neembdan Barat and Mukesh Kumar Ranwa. While on duty at about 1140 hrs. Constable Samir Kr. Chakraborty, who was on OP tower

observed that one person had thrown some suspected items over the BS fence towards Indian side where another person was present near the BS fence and OP immediately shouted about throwing of suspected article. On hearing his voice, the person, who was standing on the Indian side i.e petitioner No.2 started running towards Indian side. Constable Nageswar Ram who was available on border track immediately challenged the person, who thrown the suspected packets and shouted for help. SI Neembdan Barat and SI/G Mukesh Kr. Ranwa, who were present near OP tower chased out the person, who was running towards Indian side and ultimately apprehended him. On search, two packets wrapped in tape were found to be suspected heroin. Sampling was done after mixing the contents homogeneously, which weighed 1.980 kgs. Thereafter two samples of 5 gm each were taken out and were put in separate polythene packet and remaining bulk of the samples weighed 1.970 kgs. Petitioner were accordingly implicated in the aforesaid case.

[4]. Petitioner No.2 was positioned inside the Indian fence for the purposes of concealing the packets thrown by petitioner No.1 from other side of the fence. As per statement of petitioner No.1 which was recorded after issuance of notice under Section 67 of the NDPS Act (for short 'the Act'), he disclosed the fact

that he was doing the same as per the instructions of one Harjeet Singh, who had promised him to pay Rs.1 lacs for smuggling the said packets of heroin into India. Statement of petitioner No.2 was also recorded to the effect that petitioner No.1 was applying fertilizer in the field outside Indian fence and he threw some packets towards his direction. BSF personnel spotted the action and thereafter challenged them. The two packets were recovered towards Indian side of the fence.

[5]. Learned Senior counsel for the petitioners submitted that Harjeet Singh had already been granted bail. The alleged recovery was effected from the land of Sukhraj Singh whereas the assertion made by the prosecution is contrary to the statements of prosecution witnesses.

[6]. Learned Senior counsel further submitted that the Kissan guard, who was sent with petitioner No.1 has not been associated and examined by the Investigating Agency. The distance covered by the alleged projectile containing the narcotic would be relevant in terms of place from which it was thrown and the same ultimately landed towards Indian side of the fence. In the absence of material in the context of site plan prepared by the Investigating Officer, it cannot be presumed that petitioner No.1 would throw a projectile of about 2 kgs. weight to such a distance towards Indian side of the fence.

[7]. Learned Senior counsel further submitted that as per the information provided to the Superintendent, NCB, Chandigarh by the Battalion of BSF, the petitioner No.1 was sent with Kissan guard in the presence of post Commander. The distance from IB was shown to be 200 meters. Distance from BOP KS Wala was approximately shown to be 700 meters from OP point 225 meters nearest BS fence gate No.138. The position of the packets in Indian side was shown to be at a distance of 16.5 meters and 13.7 meters respectively from BS fence. The owner of the land where packets were recovered was found to be one Sukhraj Singh son of Ajit Singh resident of village Wan. By referring to the aforesaid details, learned Senior counsel submitted that the place from where packets were allegedly thrown would assume significance inasmuch as that keeping in view the weight of the projectile and the distance covered by it particularly in view of presence of fencing in between.

[8]. Learned Senior counsel further submitted that during course of investigation it was found that in the disclosure statement of petitioner No.1 packets were recovered from the barseen crop sown in the field of one Shera. The field of Shera was stated to be in front of the place where petitioner No.1 was putting fertilizer in the land within the fence. The BSF personnel

after recovery of the packets from the barseen crop in the field of Shera and taking the petitioners in custody brought them to the Camp office. Similar statement of petitioner No.2 was recorded in terms of notice issued under Section 67 of the Act, wherein petitioner No.2 also testified that the recovery of the packets was effected from the field of Shera where barseen crop was sown.

[9]. I have heard learned counsel for both the parties.

[10]. At this stage, this Court is not in a position to form any opinion on merits of the case, lest it may prejudice the case of either side at the time of trial. The aforesaid facts have been noted only for the sake of appreciating the controversy on *prima facie* view of the matter.

[11]. From the aforesaid material, the facts given in the complaint dated 04.02.2016 by the Battalion of BSF to Superintendent, NCB Chandigarh would be on arguable note in view of the statement of fact given in the complaint that the ownership of the land from where packets were recovered was of Sukhraj Singh son of Ajit Singh, whereas as per testimonies of the petitioners pursuant to notice issued to them under Section 67 of the Act, the alleged recovery was from barseen field of one Shera and not from the field of Sukhraj Singh.

Kissan guard was provided to petitioner No.1 at the time of his entry in the fields. The non-examination of Kissan guard would also remain a debatable issue. Petitioner No.1 was allowed to enter the fence only after proper search. The source from where the alleged packets were received by petitioner No.1 would also remain a debatable issue in view of material collected by the Police.

[12]. Harjeet Singh was allegedly arrested on 10.02.2016 and was produced before the Court on 11.02.2016 and was remanded to NCB custody for two days. The Team of NCB went to his house and recovered Rs.12,01,200/-. The effect of arrest of Harjeet Singh and recovery of amount from his house, issuance of notice under Section 67 of the Act to Harjinder Singh Thodi and his absence would be seen at the time of trial in the alleged complicity of the petitioners in respect of material collected by the police.

[13]. At this stage, without forming any opinion on the merits of the case, I am of the view that the petitioners can be granted concession of regular bail.

[14]. In view of above, petition is allowed. Petitioners are ordered to be enlarged on bail, subject to their furnishing heavy bail bonds/surety bonds to the satisfaction of the trial Court.

[15]. Nothing expressed hereinabove would be construed to be an expression of any opinion on merits of the case.

May 16, 2017

Atik

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned Yes/No

Whether reportable Yes/No