

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

CRM-M No.11666 of 2018

Date of Decision: June 01, 2018

Lakhbir Singh alias Lakha

.....Petitioner

Versus

Narcotics Control Bureau, Chandigarh Zone

.....Respondent

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. R.S.Cheema, Senior Advocate assisted by
Ms. Tanu Bedi, Advocate for the Petitioner.

Mr. D.D.Sharma, Advocate for the Respondent-NCB.

SUDIP AHLUWALIA, J.

This is the second application filed under Section 439 of the Code of Criminal Procedure seeking regular bail in case bearing NCB Crime No.14 dated 05.05.2015, under Sections 8/18/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station Narcotic Central Bureau, Chandigarh Zonal Unit, Chandigarh.

2. The petitioner's earlier application for the same purpose was rejected by a Coordinate Bench of this Court vide order dated 27.05.2016 which is Annexure P-3 of the application.

3. The matter was earlier heard in part on 23.5.2018, in which all the material submissions and contentions raised from the Petitioner's side were noted by the Court before directing the Respondent/NCB to place on record

all the implicating material available against him to enable this Court to arrive at an effective adjudication. Consequently, relevant extracts from the said order containing the case background and the submissions/contentions raised on behalf of the Petitioner are being revisited again in some of the following Paras before considering the response of the NCB.

4. The petitioner was arrested along with his brother Sukhbir Singh on the date of the alleged raids and recoveries (5th May, 2015).

5. It has been contended that the available material on record does not reveal any involvement on his part in the matter of receiving, possessing or storage of the alleged contraband, and Ld. Counsel for the petitioner has shown a copy of the Recovery Memo which does not bear the petitioner's signature. It is further contended that no disclosure statement of the petitioner at all was recorded. In addition Ld. Counsel has drawn attention of this Court to certain other aspects which resulted in rejection of his earlier bail application. One of these happens to be the fact that a letter dated 15th June, 2015 purportedly written by the Zonal Director, NCB Chandigarh to the Superintendent of Police, Sirsa regarding suspected involvement of CIA Inspector Joginder Singh had been brought to the notice of a Coordinate Bench. The other aspect was that the petitioner had allegedly refused to submit his voice samples on account of which an adverse inference was ostensibly to be drawn against him.

6. Both these highlighted aspects find specific mention in the earlier order dated 27th May, 2016.

7. Now the contention is that the petitioner's voice samples were subsequently obtained and sent for Forensic Examination, but the report is inconclusive on account of which his involvement as alleged cannot be established. It is further submitted that no action qua the CIA Inspector, Joginder Singh whose name was specifically referred to in the communication dated 15th June, 2015 till date has been taken by any of the authorities on account of which, even that factor cannot now be used to the disadvantage of the petitioner.

8. It is further submitted that vide a separate order passed in relation to the bail application of co-accused Harbans Singh @ Bansa on 9th November, 2017 (Annexure P-4) the Coordinate Bench had directed the Trial Court to conclude the trial expeditiously and preferably within four months from that date. However, an extension for three months thereafter was granted in view of the fact that three days before the last date an application for placing the report regarding the voice samples was filed on behalf of the prosecution.

9. The bail application has been opposed on behalf of the prosecution/NCB basically on the ground that by now the prosecution evidence has already been closed, and even the statements of the accused persons under Section 313 Cr.P.C. have been recorded. At this juncture, the submission raised on behalf of the petitioner is that he now needs to be released for the purpose of more effectively leading his defence evidence, which alone now remains as the stage to be crossed in the Trial, and which he cannot do while being in confinement, especially in view of the fact that

he is faced upto a high ranking officer who happens to be none other than the Zonal Director, NCB, Chandigarh, who allegedly had a personal axe to grind against the petitioner, which circumstances were also put to him during his cross-examination as PW-2, and who out of the said grudge was instrumental in having the petitioner framed in this case.

10. In this regard, reliance has been placed upon the Constitutional Bench of the Supreme Court in **“Gurbaksh Singh Sibbia versus State of Punjab” (1980) 2 SCC 565** wherein it was held inter alia -

“An accused person who enjoys freedom is in a much better position to look after his case and to properly defend himself than if he were in custody. As a presumably innocent person he is therefore entitled to freedom and every opportunity look after his own case. A presumably innocent person must have his freedom to enable him to establish his innocence.”

11. In addition, the decision of the Supreme Court in **“Moti Ram and others versus State of Madhya Pradesh” AIR 1978 Supreme Court 1594** has also been relied upon wherein it was observed that -

“The consequences of pre-trial detention are grave. Defendants presumed innocent are subjected to the psychological and physical deprivations of jail life, usually under more onerous conditions than are imposed on convicted defendants. The jailed defendant loses his job if he has one and is prevented from contributing to the preparation of his defence. Equally important, the burden of his detention frequently falls heavily on the innocent members of his family.”

12. It is further submitted that the time limit for completing the Trial imposed by this Court is now working to the disadvantage of the petitioner at this stage, as he is under tremendous pressure to complete the defence

evidence from his side in the very restricted remaining days which would be virtually impossible to accomplish, if he continues to remain in confinement.

13. Without commenting upon the substance and force in the last submissions raised on behalf of the petitioner, in the opinion of this Court, a glance over the actual implicating material available against him would be necessary to decide the fate of the present application in its totality as of now, since certain other factors referred to in the Order rejecting his earlier bail application, are no longer in existence.

14. The Respondent/NCB from its side has drawn attention to the evidence of PW-14 Kuldeep Sharma as recorded in the Trial Court, which was completed as late as on 24.4.2018. In addition, the statement of PW-11 namely Shri Pankaj Sharma, Nodal Officer, Bharti Airtel Ltd., has also been placed from the side of the Respondent.

15. *Per contra*, the petitioner's side has tendered his different statements dated 6.5.2015 and 7.5.2015 which are Annexures P-14 & P-15, apart from the statement of his brother and co-accused Sukhbir Singh, who like him was also arrested on the same date and whose statement is dated 6.5.2015, although direction on 23/5/2018 had been passed only upon the respondent to place the available incriminating material against him.

16. Undisputedly by now, the prosecution evidence has already been closed, after which even examination of the accused persons under section 313 of the Cr.PC is completed and evidence from the defence side is stated to have commenced with effect from 29.5.2018.

17. The special feature in the evidence relied upon by the Respondent/NCB, as highlighted by the Petitioner's side happens to be that no recovery of any contraband was allegedly made from his conscious possession personally, and that the recoveries so effected are attributable to his brother Sukhbir Singh, as also the fact that the Petitioner is not a signatory of any of the Recovery Memos. *Per contra*, it has been urged on behalf of the NCB that the Petitioner had actually refused to sign on the Recovery Memos, and that in any case, he had signed on the Slips attached to the samples' packets drawn up by way of certain exhibited documents/samples slips.

18. Considering the delicate stage of the trial, in which evidence from the prosecution case has already been closed, this Court consciously avoids passing any value Judgment on the relative worth and reliability of the prosecution evidence in its entirety, as against the various statements dated 6.5.2015 and 7.5.2015 relied upon by the Petitioner's side, since that could have a dangerous effect of unwittingly influencing the Trial Court's own independent appreciation of the same. It can however, be safely remarked that it is not a case of absence/total non-existence of 'any evidence whatsoever' from the prosecution side against the petitioner specifically, although credibility and valuable of the same has to be assessed independently by the Trial Court. For the sake of record however, it can be mentioned that the Disclosure Statements attributed to the Petitioner, which have been taken into evidence, are not *per se* inadmissible as they might otherwise have been under Sections 25 and 26 of the Indian Evidence Act,

1872, in view of Section 67 of the NDPS Act, as also the fact that the Investigating/Prosecuting Agency in the present case happens to be NCB and not the regular Police Authorities themselves.

19. This Court is also in agreement with the contention raised on behalf of the NCB that reliance on the Constitutional Bench decision of the Apex Court in **Gurbaksh Singh Sibbia (supra)** as also the separate decision in **Moti Ram (supra)** for the purpose of releasing him on bail so as to enable him to take appropriate steps for putting up an effective defence, would not be of help here, since those decisions of the Supreme Court had been pronounced on 9.4.1980 and 24.8.1978 respectively, which dates were long before the subsequent Legislation by way of the NDPS Act came into existence in the year 1985. The ratio of aforesaid citations would therefore, have to be balanced with the Statutory bar under Section 37 of the NDPS Act, which provides for refusal of bail for the classified offences mentioned therein and those involving commercial quantity of contraband, except in the event of the Court being satisfied that there are reasonable grounds for believing that the accused is not guilty and that he is not likely to commit any offence while on bail. (Emphasis added)

20. As already observed earlier, this Court consciously refrains giving its own opinion on the relative credibility and merits of the evidence led against the Petitioner from the prosecution side which is already completed at this fag end stage of the trial, vis-a-vis the documents/statements relied upon by the Petitioner's side, and any such observation at this late stage is likely to affect an independent appreciation and evaluation of the

prosecution evidence by the Trial Court at this very concluding stage. So keeping in view the Statutory bar for refusal of bail under Section 37 of the NDPS Act, which undoubtedly did not exist when the aforesaid decisions relied upon by the Petitioner were pronounced by the Supreme Court, at this late stage, this Court is not inclined to release him on bail, particularly considering that another culprit namely Jagsir Singh stated to be closely related to the Petitioner, is still an absconder.

21. However, in order to preclude the possibility of his suffering adversely on account of the time limit to complete the trial which the Ld. Trial Court is stated to be adhering to with exceptional strictness, and which therefore, according to the petitioner severely curtails his efforts to lead cogent and sufficient defence evidence from his side, it is ordered that the time limit for completion of the trial can be extended by the Ld. Trial Court only on prayer of the defence side for such time as they consider to be sufficient to enable them to procure and lead their evidence before the Court effectively and adequately. With these observations, the present Application is dismissed.

June 01, 2018
AS

(SUDIP AHLUWALIA)
JUDGE

1. Whether speaking/ reasoned : Yes/ No
2. Whether reportable : Yes/ No