

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

**Criminal Misc. No. M-12588 of 2018
Date of decision: 26.09.2018**

Abhishek Chetal

..Petitioner

Versus

State of Punjab

..Respondent

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. Deepak Sabharwal, Advocate
for the petitioner.

Mr. Amit Mehta, Sr. DAG, Punjab
for the respondent -State.

Daya Chaudhary, J.

Petitioner-Abhishek Chetal has filed the present petition under Section 439 Cr.P.C. for releasing him on regular bail during pendency of the trial in case FIR No.18 dated 09.11.2016 registered under Sections 21, 25, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station SSOC, District Amritsar.

Learned counsel for the petitioner submits that the petitioner has falsely been implicated in the case. As per allegations levelled in the FIR, the petitioner was found to be in possession of 500 gms of heroin and ₹39,73,000/- in cash as drug money were recovered from the petitioner. Learned counsel further submits that the petitioner was hijacked by certain persons in civil clothes on 08.11.2016 from Toll Plaza Dhilwan on Amritsar-Jalandhar Road and thereafter, he was shown to have been arrested on 09.11.2016 and since then, the petitioner is in custody. The

petitioner is young man of 27 years of age and is a qualified Civil Engineer from Punjab Technical University, Jalandhar. The petitioner is having brilliant academic record and has won several distinctions in his academic career. The father of petitioner is in retail business for the last more than 46 years. The petitioner is also in business of shawls, which is being exported to Pakistan and he is in touch with certain persons from Pakistan in connection with his business and is having telephonic conversation relating to his business activities. Learned counsel also submits that on the date of occurrence i.e., 08.11.2016, the petitioner had gone for normal business activities in City Amritsar. He was carrying some cash amount. While on return at about 9:20 pm at Toll Plaza Dhilwan, the vehicle of the petitioner was diverted by certain persons in civil clothes and he was taken to Amritsar SSOC Police Station where he was threatened and was forced to make self-incriminating disclosures. When nothing incriminating was found, the petitioner was asked to hand over the cash to them, which he was carrying. Learned counsel also submits that subsequently, the petitioner has been implicated in a false case for being in possession of 500 gms of heroin and ₹39,73,000/- alleging the same as drug money. The alleged recovery has been shown to have been effected at Daburji bypass. The presence of the petitioner at Toll Plaza Dhilwan is also reflected in the CCTV footage. The distance between Daburji and Dhilwan is more than 30 kms. Learned counsel also submits that the petitioner has approached this Court by way of filing Criminal Misc. No. M-44010 of 2016 for entrustment of the investigation of the FIR in dispute to an independent agency like CBI wherein notice of motion has been issued on 12.12.2016 and it was

mentioned in order dated 25.08.2017 by recording statement of State counsel that challan in the case has been presented and the plea raised by the petitioner has not been looked into by the Investigating Officer, which was based on CCTV footage of toll barrier. The Investigating Officer being complainant might have skipped the vital piece of evidence by considering the fact that the matter is under investigation and fair and impartial investigation is going on. Thereafter, the matter was referred to ADGP, Bureau of Investigation, Punjab with the direction to appoint a senior officer to look into the plea of petitioner and to collect all the relevant evidence and submit the report on or before 25.10.2017. Meanwhile, proceedings before the trial Court were directed to be stayed till the next date of hearing i.e., 25.10.2017. Thereafter, on 18.12.2017, report from ADGP, Bureau of Investigation, Punjab was received in a sealed cover. The challan was presented by the Investigating Agency before the trial Court without considering the directions issued by this Court and without taking into consideration the CCTV footage as well as without verifying the location of the petitioner and identification of the Police officials, who were in civil uniform. Learned counsel also submits that earlier the petitioner filed Criminal Misc. No. M-16044 of 2017, which was dismissed as withdrawn vide order dated 15.01.2018. After getting the report, the present petition was filed, which was ordered to be heard along with Criminal Misc. No. M-44010 of 2016. It is also the argument of learned counsel for the petitioner that co-accused of the petitioner, namely, Gurbhej Singh @ Bheja has been granted concession of regular bail by this Court vide order dated 19.05.2017 passed in Criminal Misc. No. M-15475 of 2017. The alleged recovery is

non-commercial and the petitioner is not having any criminal background as no other case is pending against him. All the witnesses are official witnesses and there is no possibility that the petitioner may influence the witnesses or tamper with the evidence.

Learned State counsel has opposed the submissions made by learned counsel for the petitioner on the ground that the petitioner has approached this Court for grant of regular bail without approaching the trial Court. Learned State counsel also submits that the petitioner cannot claim parity with his co-accused as he was made accused on the basis of disclosure statement made by the present petitioner.

Heard arguments of learned counsel for the petitioner as well as learned State counsel and have also perused the contents of the FIR and other documents available on the file.

Admittedly, the FIR in dispute was registered on 09.11.2016. As per case of the petitioner, he was returning from Amritsar to Jalandhar and was picked up at Toll Plaza Dhilwan by the Police persons in civil uniform. The registration number of the Swift Desire car of the petitioner is also reflected in the CCTV footage as it was kept preserved under the orders passed by the trial Court. The arrest of the petitioner has been shown from Daburji bypass, which is approximately 40 kms from Toll Plaza towards Amritsar and the alleged recovery of 500 gms of heroin being kept under the driver seat of the car along with ₹39,73,000/- as drug money is shown to have been effected from the petitioner. On filing representation to higher authorities by the father of the petitioner, the matter was referred to ADGP, Bureau of Investigation, Punjab, to look into the plea regarding CCTV

footage, which was kept preserved. The petition for transfer of investigation is still pending before this Court.

As per Chemical Examiner's report, it was found that the sample contains 34.57% Diacetylmorphine (Heroin) and the alleged recovery effected from the petitioner as stated in the FIR is 500 gms. The actual quantity as per report comes to approximately 172.85 gms, which is much less than the commercial quantity. The consent memo and the recovery memo bears the FIR number, which was recorded after effecting recovery by sending the rukka. The statement of independent witness-Chandanjit Singh is totally contrary to the version of the FIR as it has been stated that he was joined after the petitioner refused to get the search conducted by the Investigating Officer whereas as per his statement, he was present along with Police party prior to the incident when the petitioner was stopped by the Police party. Even the last tower location of the mobile of petitioner has not been taken into consideration, which was at Dhilwan Toll Plaza and thereafter, it was switched off.

In the present case, the complainant and the Investigating Officer is the same officer, namely, SI Sukhbir Singh whereas for fair investigation, the complainant cannot be the Investigating Officer. It has been found in the present case that the alleged seals used by the DSP was retained by the DSP himself and the seal of IO was handed over to the ASI instead of handing over both the seals to the independent witness. It shows that the seals were with the Police at all time and tampering of the same cannot be ruled out. The petitioner is in custody since 08.11.2016 and his co-accused, namely, Gurbhej Singh @ Bheja has been released on regular

bail by this Court. Proceedings before the trial Court have been stayed and no purpose would be served by keeping the petitioner in custody as no other case is pending against him.

Accordingly, the present petition is allowed and the petitioner (Abhishek Chetal) is directed to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court.

However, in case, the petitioner is found to be involved in any other case of NDPS, the State is at liberty to move an application for cancellation of bail.

26.09.2018
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes