

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

CRM-M-41663-2018 (O&M)

Date of decision:12.11.2018

Nirmal Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Karan Bhardwaj, Advocate
for the petitioner.

Mr. K.S.Aulakh, DAG, Punjab.

RAJBIR SEHRAWAT, J. (ORAL)

Prayer in this petition filed under Section 439 of Cr.P.C. is for grant of bail pending trial in case FIR No.41 dated 25.02.2017 under Section 15, 25 of NDPS Act (offence under Section 25 deleted and offences under Section 15, 61, 85 of NDPS Act have been added), registered at Police Station Sangat District Bathinda.

Learned counsel for the petitioner submits that the allegations as mentioned in the FIR are that the Canter of Tata Company bearing registration No. PB-04P-7882, full of poppyhusk, was seen by the police coming towards them. The police tried to stop the same. The driver left the Canter and ran away from the spot. The police also mentioned the physical attributes of the driver in the FIR itself. However, still the owner of the Canter was not arrested. After one year, the petitioner has been sought to be involved in the case. The only reason for implicating the petitioner in this case is that the police contacted the registered owner of the Canter in question. The registered owner is alleged to have given an affidavit that he had sold the vehicle to the present petitioner. Therefore, by implication, the

police has tried to rope in the petitioner treating him to be the owner. It is further contended by the counsel for the petitioner that the petitioner has never purchased the Canter in question. The police has not been able to collect any evidence showing any payment having been made by the petitioner to the registered owner for having purchased the Canter in question. It is further contended, that in fact, the police is hob-nobbing with the registered owner and just to save him, the name of the petitioner has been involved in this case. Otherwise, even the signatures of the petitioner on the alleged affidavit, furnished by the registered owner, do not tally with his signatures on the arrest memo; which is very much available with the police. Even the physical attributes of the petitioner do not match with the one mentioned by the police in the FIR. The petitioner has no concern either with the Canter in question or the material loaded with the same. Still further, it is contended that the affidavit furnished by the registered owner is of a date just about a week before the alleged incident. Therefore, the same is about one year old. Still the registered owner does not claim to have moved any application to the registering authority for transferring the same in the name of the petitioner, as required by Motor Vehicles Act. The petitioner does not have any other case against him. This also shows that the petitioner has no concern with the Canter in question.

On the other hand, counsel for the State, being instructed by ASI Gurjant Singh, submits that the recovery in this case is very heavy, therefore, the petitioner cannot possibly be falsely implicated. It is further contended that the petitioner has purchased the Canter in question. However, the counsel has not been able to point out any other case against the petitioner. Still further, counsel has not been able to contradict the

assertion of the counsel for the petitioner that there is no evidence with the police regarding any payment having been made by the petitioner to the registered owner for purchase of the Canter in question.

The above argument of learned counsel for the State that there is heavy recovery, therefore, the petitioner cannot possibly be falsely implicated; is totally irrelevant. It is not a case where the petitioner was arrested at the spot. The police has, admittedly, involved the petitioner only after taking leisurely time of one year. Even after one year, only evidence collected against the petitioner is the alleged affidavit of having purchased the Canter from the registered owner. This affidavit is also handed over to the police on 21.02.2018. Under the Motor Vehicles Act, this affidavit was not even having the legal significance on the date when the same was handed over to the police, since no application for transfer of vehicle is made by registered owner in prescribed time. Therefore, it cannot be said with certainty that it is the petitioner only who is the owner of the vehicle in question. Even the attributes of the petitioner differ from the one mentioned in the FIR. Therefore the identity of the petitioner and the ownership of the Canter in question are moot points, which are to be decided during the course of trial.

In view of the above, but without expressing any further opinion on the merits of the case, the present petition is allowed. The petitioner is ordered to be released on bail pending trial subject to his furnishing bail bonds/surety to the satisfaction of the Trial Court/Duty Magistrate, concerned.

(RAJBIR SEHRAWAT)
JUDGE

12.11.2018
Hemlata

Whether speaking/reasoned
Whether reportable

Yes / No
Yes / No