

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

**CRM-M No.44785 of 2017
Decided on: 21.05.2018**

Balwinder Singh @ Channa

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. J.S. Dadwal, Advocate
for the petitioner.

Ms. Samina Dhir, DAG, Punjab.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for grant of regular bail to the petitioner in FIR No.67 dated 05.05.2017, for offence punishable under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') registered at Police Station Subhanpur, District Kapurthala.

Counsel for the petitioner has submitted that at the first instance, in the same Police Station Subhanpur, FIR No.42 was registered against 03 persons namely Sukhchain Singh, Sukhdev Singh and Gurdev Singh on the basis of a secret information given to ASI Jasbir Singh and after registration of the said FIR No.42, the aforesaid 03 persons were arrested and on their disclosure statement, the petitioner was arrested. It is further submitted that as per the allegation in the present FIR i.e. FIR No.67 dated 05.05.2017, it is specifically alleged that while in custody in the earlier FIR i.e. FIR No.42 dated 02.04.2017, during the interrogation, the petitioner has suffered a

disclosure statement that he has hidden some heroin and money in a polythene bag on a path along with a railway line from Hamira to Dayalpura Fatak (railway crossing). Thereafter, the Investigating Officer on the basis of the disclosure statement made by the petitioner reached at the said place and recovered the polythene bag along with the amount of Rs.1400/-. On weighing, the intoxicant substance was found to be 114 gms., which later on, as per the FSL report was found to be Alprazolam. Counsel for the petitioner has further submitted that admittedly on the date of alleged recovery in the present FIR No.67, the petitioner was already under judicial lock up in FIR No.42 and if any recovery during the investigation of said FIR No.42 was effected the same should have been part and parcel of the said FIR, however, the present FIR has been registered just to register another FIR against the petitioner under the NDPS Act in order to make the offence more grievous against the petitioner. It is also submitted that the Investigating Officer in both the cases is ASI Jasbir Singh and the petitioner has already been granted the concession of regular bail by the Court of Sessions vide order dated 11.05.2017 (Annexure P3).

A perusal of the present FIR show that the Additional Sessions Judge has granted bail to the petitioner noticing the fact that nothing was recovered from the possession of the accused/applicant during the investigation of the said FIR No.42.

Counsel for the State, on instructions from ASI Prem Lal, has not disputed the factual position that the Investigating Officer in both the cases is ASI Jasbir Singh and during the investigation of the first FIR No.42, the alleged recovery of 114 gms of intoxicant powder

was received which was never taken as case property in the said case and a fresh FIR has been registered against the petitioner.

After hearing the counsel for the parties, I find that the procedure adopted by the Investigating Officer in registering the second FIR against the petitioner, on the basis of the disclosure statement made by the petitioner in first FIR No.42, when he was in judicial lock up, is not as per the provisions of law. The manner in which the investigation has been conducted by ASI Jasbir Singh in both the cases, *prima facie* show that the procedure under Section 50 of the NDPS Act was not followed in spite of the fact that the petitioner was already in judicial lock up in earlier FIR No.42.

Without commenting anything on merits of the case and considering the fact that the petitioner has been granted bail in the first FIR No.42; he is in judicial lock up in the present FIR since 10.05.2017; a period of more than 1 year has been elapsed and the case is still at the stage of recording the statement of prosecution witnesses, the present petition is allowed and the petitioner is ordered to be released on bail subject to furnishing bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate.

However, it will be open for the prosecution to apply for cancellation of bail, if the petitioner is found misusing the concession of bail, in any manner.

(ARVIND SINGH SANGWAN)
JUDGE

21.05.2018
yakub

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No