

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

CRM-M-29738-2018 (O&M)

Date of decision: 01.10.2019

Harpreet Singh @ Chintu

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Ms. Priyanka Dalal, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN, J. (Oral)

This is the second petition filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.3 dated 26.02.2018 registered under Sections 21 and 29 of the NDPS Act (Section 27-A of the NDPS Act, added subsequently) at Police Station SSOC, Amritsar.

The first bail application i.e. CRM-M No.20034 of 2018, filed by the petitioner was dismissed as withdrawn on 16.05.2018.

On 24.07.2018, the following order was passed:

“Counsel for the petitioner has submitted that the petitioner is continuously in judicial custody since 2014 and on 05.03.2018, he was brought on production warrants in present FIR and his disclosure statement was recorded, however, in pursuance thereof, no recovery was effected. It is further submitted that vide order dated 24.04.2018 passed by the Division Bench of this Court in CRM No.5297 of 2018 filed in CRA-D No.137-DB of 2018, the sentence of the petitioner was suspended in FIR No.93 dated 20.01.2018, where he was convicted under Section 21 of the NDPS Act for a period of 14

years rigorous imprisonment and to pay a fine of Rs.1,50,000/-, on the ground that as per Section 42 of the NDPS Act, the investigation was not conducted by an officer of the rank of ASI or above.

Counsel for the petitioner has further argued that on the very next day i.e. 25.04.2018, a DDR No.26 was registered in the aid of Section 27-A of the NDPS Act and the petitioner was implicated in the present FIR. It is further submitted that as per the allegation in the FIR, the petitioner was not named and the allegations are against 02 persons namely Manmeet Singh and Amandeep. Manmeet Singh was arrested at the spot whereas the other persons Amandeep ran away and the police has recovered huge amount from Manmeet Singh and thereafter, on the disclosure statement of said Manmeet Singh, 04 persons were nominated in FIR including the petitioner. It is further submitted that the petitioner is either on bail in the other FIRs or has been acquitted/discharged.

Counsel for the State, on instructions from SI Sukhbir Singh, has submitted that as per the disclosure statement of Manmeet Singh, it has come that he has given huge amount to the petitioner, who has sent the same to Dubai for illegal drug trade and for this purpose, he was using a mobile phone inside the Jail.

The Investigating Officer, however, could not give a satisfactory reply if any, FIR regarding a jail offence for possessing a mobile phone was registered against the petitioner after 05.03.2018 till granting of bail by this Court in the aforesaid case. It is also not clear how the alleged mobile phone used by the petitioner came in his possession as no such complaint was lodged before the jail authorities.

In view of the same, the Investigating Officer is

directed to file a specific affidavit along with the Custody Certificate of the petitioner on the next date of hearing.

List again on 13.08.2018.”

In pursuance thereof, the affidavit of DSP, State Special Operations Cell, Amritsar, was filed in which, it is stated that co-accused Manmeet Singh was collecting the money from the smugglers and was sending the same through hawala network for procuring the drugs.

It is further stated in the affidavit that from the petitioner, no mobile phone was recovered and, therefore, Section 42-A of the Prison Act invoked and after forensic science analysis of the mobile phone used by co-accused Manmeet Singh, it was found that no data can be recovered as the phone was formatted.

Learned counsel for the petitioner submits that the petitioner was in judicial custody since 2014 as he was involved in some other cases, out of which, he stands acquitted in three FIRs i.e. FIR Nos. 166, 325 and 110 and he has been granted bail in two other FIRs.

Learned counsel for the petitioner further submits that even in a case where the petitioner has been convicted for a period of 14 years in FIR No. 93, his sentence has been suspended by a Division Bench of this Court in CRA-D-137-DB-2018.

Learned counsel for the petitioner further submits that it is the own case of the prosecution that the petitioner was brought on production when he was arrested on 09.03.2018 and nothing was recovered from him during investigation.

It is further submitted that now the statement of PW-1/IO Inspector Vikrant Sharma has been recorded by the trial Court and in the

cross-examination, this witness has admitted that no witness has named the petitioner as accused during investigation and the petitioner was already in Central Jail, Amritsar and no mobile phone or SIM card was recovered from him during investigation. This witness, in cross-examination, has further stated that no evidence has surfaced during investigation conducted by him qua involvement or conspiracy or abetment of the petitioner with any other accused in the present case.

Learned counsel for the petitioner has, thus, argued that the petitioner, who has been arrested in the present case on the basis of the disclosure statement of a co-accused, is not found to be involved in the present case as per the statement of PW-1/IO Inspector Vikrant Sharma himself.

Learned State counsel, on instructions from ASI Karnail Singh, has not disputed the factual position as stated above.

I have heard learned counsel for the parties.

Without commenting upon the merits of the case, considering the aforesaid submissions of learned counsel for the petitioner and also in view of the fact that petitioner is in judicial custody since 09.03.2018 and out of total 25 prosecution witnesses, only 04 witnesses have been examined so far, the instant petition is allowed. The petitioner is ordered to be released on regular bail on his furnishing bail bonds and two sureties to the satisfaction of the trial Court/Duty Magistrate concerned.

01.10.2019

Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No