

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-20277-2019

Date of decision: 17.07.2019

Amar Singh

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Aditya Sanghi, Advocate
for the petitioner.

Mr. Himmat Singh, DAG, Haryana.

ARVIND SINGH SANGWAN, J. (ORAL)

This is 2nd petition for grant of regular bail in FIR No.270 dated 17.11.1998 under Section 18 of NDPS Act No.61 of 1985, registered at Police Station Bhattu Kalan, District Fatehabad, the first petition was dismissed as withdrawn to approach the trial Court.

Learned counsel for the petitioner submits that the petitioner was never arrested in the FIR and was later on declared a proclaimed offender on 27.02.1999. It is further submitted that the petitioner, who is resident of Rajasthan, was not aware about pendency of this FIR, as in the intervening period, he stayed in Rajasthan and even obtained arms licence, which was renewed from time to time, after seeking verification from the local police and at no point of time, an information was sent to the police station about

proclamation proceedings.

Learned counsel has supplied a photocopy of the arms licence and the same is taken on record.

Learned counsel for the petitioner further submits that as per allegations in the FIR, registered at the instance of Shish Pal Singh, Inspector, he received an information that six persons have gone towards Dhani of Lilu in a jeep bearing registration No.HR-22A-9921 and accused Lilu, Kuldeep, Anirudh, Ramphal and Pala Ram were sitting in the jeep and Subhash was driving the same and they have brought the opium from Rajasthan. A raiding party was formed and recovery of the opium was effected from four persons Lilu, Anirudh, Kuldeep and Ramphal. Thereafter, the police completed the investigation, submitted the challan and all these aforesaid accused persons faced the trial. It is further submitted that the Additional Sessions Judge, Fatehabad, vide judgment dated 03.12.2001, convicted Lilu, Kuldeep, Ramphal and Anirudh, whereas Pala Ram, Subhash and Manoj Kumar were acquitted giving them benefit of doubt.

Learned counsel has further argued that the police, during the investigation, recorded two disclosure statements of aforesaid Lilu and in the first disclosure statement dated 17.11.1998, it is stated that he along with co-accused, by putting the jeep in front of a truck bearing registration No.RJ-18-0067 of petitioner Amar Singh, which was coming from Madhya Pradesh towards Sikar, Rajasthan, stopped the same and by threatening and scaring the persons sitting in it, snatched a bag of opium lying in the tool box of the truck and by putting it in the jeep, the same was brought to the Dhani of Lilu. Thereafter, the police recorded another disclosure statement of Lilu on

20.11.1998, in which he has stated that when they were present at Chirawa in jeep bearing registration No.HR-22A-9921, petitioner Amar Singh met them and he has brought the opium from M.P. in truck bearing registration No.RJ-18-0067 and had sold the same to him and an amount of Rs.2.50 lacs was already with the petitioner and thereafter, by loading the opium bag in the jeep, they brought it to the Dhani of Lilu.

Learned counsel for the petitioner has further submitted that the only evidence against the petitioner is two disclosure statements of aforesaid Lilu and except these, there is no evidence against him. It is further submitted that even the registered owner of the truck bearing registration No.RJ-18-0067 was one Sohi Ram, who was never arrested by the police and therefore, at this stage, except the disclosure statements, no evidence has come on record against the petitioner. It is also submitted that the petitioner has already surrendered before the trial Court on 08.03.2019; challan stands presented and it will take some time in conclusion of the trial.

Learned counsel has relied upon a judgment in **Surinder Kumar Khanna Vs. Intelligence Officer, Directorate of Revenue Intelligence, 2018 (3) RCR (Crl.) 954**, wherein the Hon'ble Supreme Court, in a case under the NDPS Act, has held that confessional statement of co-accused, cannot by itself, be taken as substantive evidence against another co-accused and in the absence of any substantive evidence, it would be inappropriate to base conviction of a person purely on the statements of co-accused.

In reply, learned State counsel, on instructions from ASI Bhal Singh and in view of the facts and evidence recorded in the judgment dated 03.12.2001, has not disputed that only evidence against the petitioner is two

confessional statements of Lilu. It is also not disputed that the petitioner is not registered owner of the aforesaid truck and one Sohi Ram is owner of the same, who had never been arrested by the police and was declared proclaimed offender.

Without commenting anything on merits of the case, considering the aforesaid submissions made by learned counsel for the parties and in view of judgment of the Hon'ble Supreme Court in **Surinder Kumar Khanna's** case (supra), this petition is allowed and the petitioner is directed to be released on regular bail subject to furnishing his bail bond and two sureties, to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate.

Petition is disposed of.

[**ARVIND SINGH SANGWAN**]
JUDGE

17.07.2019
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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No