

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-13192-2020

Date of Decision: 02.12.2020

Jeewan Sareen

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Sandeep Wadhawan, Advocate, for the petitioner.

Mr. Saurav Khurana, DAG, Punjab, for the respondent-State.

Through Video Conferencing

JASGURPREET SINGH PURI, J. (Oral)

The present petition has been filed under Section 439 of the Code of Criminal Procedure, for grant of regular bail to the petitioner in FIR No.214 dated 11.09.2014, under Sections 21 and 22 of the NDPS Act, registered at Police Station Sadar, District Amritsar.

As per the FIR, when the police party was on a private vehicle, and motorcycles were going from Fatehgarh Churian Road Amritsar towards Akash Avenue in relation to patrolling and in search of anti-social elements when the police party reached Bajwa Hospital near Akash Avenue, then a Hindu young person started walking on the road from the side of Akash Avenue and on looking at the police party, he became perplexed and tried to turn back, who was apprehended by the ASI on the basis of suspicion and when he was asked about his name and address then he disclosed his name to be Jeevan Sareen (petitioner) and on interrogating him, he took out one polyethene black envelope from the right side pocket of his trouser, which was carrying some substance and he tried to throw away and the ASI smartly caught

hold of his right hand and snatched envelope and asked as to what is this and he replied that it contains medicine and when the ASI tried to check the envelope, he told that it contains some intoxicating powder. No person from the public could be joined with the police party at the spot. The weight of the intoxicating powder came out to be 140 grams and out of which 10 grams was taken as a sample and sent for examination. Thereafter, the petitioner was arrested but the learned trial Court released him on interim bail on 14.10.2014, on the ground that the FSL report regarding the content of the intoxicating powder was not received. Thereafter, the challan was presented on 25.09.2018 after a lapse of 04 years and during the presentation of the challan, the petitioner was not produced before the learned trial Court and on 28.02.2020, he was declared as proclaimed offender and was arrested on 04.03.2020. The petitioner is now on interim bail, which has been granted by this Court vide order dated 17.07.2020.

The learned counsel for the petitioner has submitted that the petitioner was falsely implicated in the aforesaid FIR and there was a delay of 04 years in presentation of the challan despite the fact that the FSL report was received by the police from the FSL in the year 2015 itself. He has further submitted that when the police presented the challan after a lapse of 04 years, the petitioner was never informed regarding the same and challan was presented in his absence. Thereafter, due to the aforesaid incident, the petitioner was declared as proclaimed offender by the learned trial Court and suddenly, the police arrested the petitioner on 04.03.2020. He has submitted that the petitioner has been unnecessarily roped up in the present case and it was because of the mala fide intention of the police that he has suffered incarceration. He has further submitted that the petitioner is in custody for

about 6½ months and there is no other case registered against the petitioner and is not involved in any kind of unlawful activity. He has further submitted that even otherwise also since the alleged recovery was made from the person of the petitioner, the provisions of Section 50 of the NDPS Act was not complied with and therefore, the entire trial gets vitiated in view of the same.

When this matter came up for hearing before this Court on 22.06.2020, the learned State counsel sought some time for filing of an affidavit explaining the delay in filing of the challan and also in preparing and presenting the samples for chemical examination. Thereafter, on 17.07.2020, when this matter came up for hearing before this Court, the learned State counsel contended that the reply has been filed in the Registry on 03.07.2020 but as per the noting of the office, no documents have been received in the Registry and this Court granted interim bail to the petitioner. Thereafter, an additional affidavit has been filed by the Assistant Commissioner of Police, North, Amritsar City, on behalf of the respondent-State, in which no specific reason has been given for not filing of the challan and rather, it is stated in the affidavit that it is in continuation of the earlier status report filed whereas, this Court had already observed that no reply has been filed by the State earlier. In para No.4 of the affidavit, it has been stated by the Assistant Commissioner of Police that the sample was sent for analysis to the Forensic Science Laboratory, Kharar, on 20.09.2014 and the same was received on 28.08.2015. It is further stated in para No.5 of the affidavit that till date the charges have not been framed.

A perusal of the affidavit filed by the Assistant Commissioner of Police, Amritsar, would show that no justification has been given with regard to delay in filing of the challan before the Court, nor any justification has been

given with regard to the non-compliance of the Section 50 of the NDPS Act. It is also clear from the affidavit that the FSL report was received on 28.08.2015 and after a lapse of 03 years, the challan has been presented and till date the charges have not been framed.

Mr. Saurav Khurana, learned Deputy Advocate General, Punjab, has submitted that since the alleged recovery was commercial in nature, therefore, he has opposed the grant of bail to the petitioner.

I have heard the learned counsel for the parties.

The facts which are clearly discernible from the present case would be that the FIR was registered on 11.09.2014 and the report of the Forensic Science Laboratory was received on 28.08.2015 but the challan was presented after a period of 04 years from the date of FIR and after a period of 03 years from the date of receiving the report of the FSL. Thereafter, although the petitioner was declared as proclaimed offender but the justification put by the learned counsel for the petitioner was that he was never informed after a lapse of 04 years would also be a factum, which is to be considered for the purpose of granting bail to the petitioner. No justification has come forward either from the affidavit of the Assistant Commissioner of Police or from the learned State counsel as to why there was a delay in presentation of the challan and even 03 years after receiving the report from the Forensic Science Laboratory. Furthermore, no justification has come on record as to why the provisions of Section 50 of the NDPS Act was not complied with.

The Section 37 of the NDPS Act clears a bar for the grant of bail but the same is subject to exceptions. In case, when the Court is satisfied that there is reasonable doubt for believing that he is not guilty for such an offence and he is not likely to commit an offence while on bail, then after giving an

opportunity to the public prosecutor, bail can be granted. In the present case, an opportunity has been given to the public prosecutor and it is not a case of the State that in case the petitioner is released on bail then he is likely to influence any witness or to temper the evidence. So far as the third component with regard to satisfaction as to whether the petitioner was guilty or not at this stage, the facts and circumstances which have emanated from the present case would suggest that no justification has come forward from the State while making submissions or by way of filing an affidavit before this Court that why there was a delay of filing challan in the Court after a delay of 04 years and despite the fact that the FSL report was received by the police in the year 2015. Furthermore, no justification has come forward as to why provisions of Section 50 of the NDPS Act was not complied with by the State. It is an admitted position that there is no other case against the petitioner. Therefore, prima facie it can be believed at this stage that the petitioner is not guilty.

Therefore, considering the totality of circumstances of the present case, I deem it fit and proper to grant bail to the petitioner. Consequently, the present petition is allowed. The petitioner shall be admitted to regular bail on his furnishing bail bond/surety and subject to the satisfaction of the learned trial Court/Duty Magistrate.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant for the purpose of deciding the present petition only.

(JASGURPREET SINGH PURI)
JUDGE

02.12.2020

adhikari

Whether speaking/non-speaking	:	Yes/No
Whether reportable	:	Yes/No