

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

Crl. Misc.No.M-17991 of 2020

Date of Decision:- 01.09.2020

Mustkim

....Petitioner

vs.

State of Haryana

....Respondent

BEFORE :- HON'BLE MR. JUSTICE SUDHIR MITTAL

Present:- Mr. D.S. Matya, Advocate,
for the petitioner.

Mr. Munish Sharma, AAG, Haryana.

Sudhir Mittal, J.

FIR No. 95 came to be registered on 28/08/2018 on intimation sent by Sub Inspector Sultan Singh to the SHO Police Station, Rohrai. The said Sub-Inspector had received secret information that some narcotic substance was being transported in a ten tyre truck bearing registration No. HR-58A-4662 from Rajasthan to Panipat and that in case a naka was setup, the intoxicating substance could be seized. A naka was set up and the aforementioned truck was spotted. The driver of the truck tried to turn it around but the truck was stopped and the driver overpowered by the police personnel. The driver disclosed his name as Asfak son of Shamshad and the person sitting in the co-driver seat disclosed his name as Nawab son of Sarfaraj. A Gazetted Officer was called at the spot for carrying out a search.

The search yielded five bags of poppy husk, total weight of which was 205

Kgs. 100 grams. Samples were taken and sealed and aforementioned Asfak and Nawab were arrested.

During the course of the investigation, the police recorded the disclosure statements of the persons who had been arrested. Accused-Asfak disclosed that the contraband was being transported on the directions of the petitioner, namely, Mustkim son of Iqbal. The police also found that he was the registered owner of the truck and, thus, nominated him as an accused.

The petitioner approached this Court through Crl. Misc.No.M-55178 of 2019 for the relief of anticipatory bail. Along with the petition, he annexed affidavit dated 18th December, 2019 allegedly sworn by one Jabir son of Sagira that the truck in question had been purchased by him on 7th June, 2018 for a sum of ₹ 9,25,000/-. However, this Court declined to grant protection to the petitioner and the petition was withdrawn with liberty to surrender before the trial Court and seek regular bail. The trial Court was directed to decide the bail application within three days. Consequently, the petitioner surrendered on 21st January 2020 and sought regular bail. The application was, however, dismissed vide order dated 23rd January 2020. Thus, the present petition has been filed.

Learned counsel for the petitioner has argued that the truck in question had already been sold by the petitioner to aforementioned Jabir on 7th June 2018 and, thus, the petitioner could not be held responsible or criminally liable for any recoveries made from it after the said date. To support his argument, he has placed on record affidavit dated 7th June 2018 of the petitioner as Annexure P-2, receipt dated 7th June 2018 as Annexure P-3 and affidavit dated 7th June 2018 executed by aforementioned Jabir as Annexure P-4. The affidavit filed with the petition for grant of anticipatory bail has been annexed as Annexure P-5. It has further been argued that Jabir

has also been nominated as an accused as is evident from notice dated 26th November, 2019 issued by the Sub Divisional Judicial Magistrate Kosli, copy annexed as Annexure P-6. His nomination implies that the police has accepted him to be the owner of the truck. Thus, the petitioner is not liable to be criminally prosecuted. The petitioner has been in custody since 21st January, 2020 and the trial is not likely to be concluded at an early date. Thus, he deserves to be granted regular bail

Apart from the written statement, an additional affidavit of Sh. Mohinder Singh, DSP/HPS, Kosli, dated 24th August 2020 has been filed on behalf of the State. According to this affidavit, petitioner's affidavit dated 7th June, 2018 annexed as Annexure P-2 with this petition as well as affidavit dated 7th June, 2018 of Jabir annexed as Annexure P-4 are fabricated documents. The Notary Public Kaleem Ahmed, Advocate, who allegedly attested the said affidavits has denied the attestation. His statement has been annexed along with the additional affidavit as Annexure R-1. It has also been stated that according to the record of the Registering Authority, Yamunanagar, the petitioner is the registered owner of the truck and the statement of the concerned clerk has been annexed as Annexure R-2. Call detail records have been annexed as Annexures R-4 to R-5 in support of the submission that co-accused Asfak was constantly in touch with the petitioner on 26th, 27th and 28th August 2018.

Accordingly, learned State counsel has argued that the affidavits relied upon by the petitioner have been found to be false. The records of the Registering Authority continues to show the petitioner to be the owner of the truck and, thus the petitioner cannot avoid criminal liability. Call detail records establish that the petitioner was in touch with the driver

of the vehicle not only on the date of the incident but also on two earlier days. The implication is clear that the petitioner was involved in the operation of drug running. Jabir and the petitioner appear to be working in collusion and merely because Jabir has been nominated as an accused, the criminal liability of the petitioner has not ceased to exist. A huge quantity of contraband has been recovered and, thus, the petitioner does not deserve to be granted regular bail.

In response to the arguments raised by learned State counsel, learned counsel for the petitioner submits that Asfak is a freelance driver. The petitioner runs a transport business and he wanted to engage the services of Asfak at a later date. Thus, the petitioner was in touch with him on phone. The call records, thus, stand explained. The affidavit annexed as Annexure P-5 (affidavit dated 18th December, 2019 of Jabir filed with the anticipatory bail application) has not been denied in either the written statement filed by the State or the additional affidavit and, thus, there is evidence on record to indicate that the petitioner had already sold the truck in question.

The first and foremost argument of the learned counsel for the petitioner is that the truck had already been sold on 7th June, 2018 and thus the petitioner has no liability in respect of an FIR registered more than two months later. Disclosure made by a co-accused is a very weak piece of evidence and reliance thereupon is not permissible in law. The petitioner has been in custody for more than seven months now and, thus, he deserves to be granted regular bail. The arguments cannot be accepted as the police investigation has shown that affidavit Annexure P-4 allegedly executed by Jabir is no affidavit in the eyes of law as the attesting Notary has denied its attestation. No reliance can be placed upon the said affidavit and it can't be

held that the sale allegedly executed on 7th June, 2018 was valid and

genuine. Even though, the affidavit Annexure P-5 has not been specifically denied in the written statement of the State and the additional affidavit filed on its behalf, learned State counsel is justified in arguing that this would not imply that the said affidavit is a genuine document. The contents of affidavit Annexure P-5 are similar to contents of affidavit Annexure P-4, which has been found to be false and mere non-denial thereof in the reply of the State does not lead to the conclusion that the same has been admitted. The State possibly could not have said anything regarding the affidavit Annexure P-5 as the same is not part of the police file, the same having been filed in the High Court. Assuming that affidavit Annexure P-5 is genuine, it would not be prudent to place reliance upon it as possibility exists that Jabir and the petitioner are hand in glove.

The next argument raised on behalf of the petitioner is that criminal liability, if any, of the petitioner has come to an end upon nomination of Jabir as an accused. Learned counsel for the petitioner wishes to convey that nomination of Jabir as an accused implies that the police has accepted that the petitioner had in fact sold the truck on 7th June, 2018. I cannot accept this submission for the simple reason that the matter is still under investigation and at this stage it cannot be ruled out that the petitioner and Jabir are working together.

Finally, it has been argued that co-accused Asfak (driver of the vehicle in question) is a freelance driver and, the petitioner was trying to contact him as he is running a transport business. This argument is one of desperation. It has been raised to negate the evidence on record that the petitioner and the driver of the vehicle were in touch through telephone not only on the date of the incident but also earlier. The same cannot be accepted because there is nothing on record to substantiate the oral submission made

on behalf of the petitioner that he is a transporter. Assuming, that the submission is correct, the police is entitled to investigate the matter in depth and if found to be true, the petitioner may be exonerated at the time of filing of challan. At this stage, the fact that the petitioner was in regular contact with the driver of the vehicle raises a strong suspicion against him and cannot be ignored.

The case is regarding an alleged inter-state drug racket which has yielded recovery of a large quantity of contraband. For this reason and the reasons aforementioned, I do not find any ground to allow this petition. The same is dismissed. However, nothing stated herein-above shall be construed to be an expression of opinion on the merits of the case.

September 01, 2020
poonam

(SUDHIR MITTAL)
JUDGE

Whether Speaking/Reasoned **Yes**

Whether Reportable **Yes**