

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

CRM-M-18337-2020 (O&M)
Date of Decision:- 17.9.2020

Harminster Singh @ Sonu

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Naveen Sharma, Advocate for the petitioner.

Mr. Luvinder Sofat, AAG, Punjab.

(proceedings conducted through video conferencing)

GURVINDER SINGH GILL, J. (Oral)

1. The petitioner seeks grant of regular bail in a case registered against him vide FIR No.60 dated 4.6.2019 under Section 21 of NDPS Act, 1985 at Police Station Mahilpur, District Hoshiarpur.
2. The allegations in the FIR are broadly to the effect that SI Surinder Singh, who was present in the police station, received a telephonic call from SI Dilbagh Singh, Incharge Narcotic Cell, Hoshiarpur to the effect that when said SI Dilbagh Singh alongwith other police officials was present near bus stop Thuana, then they came across a clean-shaven person on a Platina motorcycle bearing registration No.PB-07AH-4998, who upon noticing the police party tried to move swiftly but was nabbed by the police on the basis of suspicion and upon enquiry disclosed his name as Harminster Singh @

Sonu (petitioner). Since it was suspected that he was carrying some narcotics, said SI Dilbagh Singh requested SI Surinder Singh to reach at the spot. SI Surinder Singh went to the spot and disclosed his identity to the person nabbed by the police party headed by SI Dilbagh Singh and extended an offer to him in terms of Section 50 of NDPS Act and since the aforesaid Harinder Singh opted to be searched in the presence of a gazetted officer, DSP Prem Singh was called at the spot and in his presence search of the petitioner Harinder Singh was conducted which yielded recovery of 350 grams of '*heroin*'. It is further the case of prosecution that pursuant to the aforesaid recovery of '*heroin*', the petitioner as well as the recovered contraband were produced before the Illaqa Magistrate, who drew two samples weighing 5 grams each and duly sealed them. One of the samples was sent for chemical examination to FSL and as per its report Annexure P-6, the same was found to contain '*heroin*'.

3. The learned counsel for the petitioner has submitted that he has falsely been implicated in the present case by SI Dilbagh Singh, who has a notorious reputation of falsely implicating innocent persons in order to extort money. It has been submitted that the aforesaid SI Dilbagh Singh was infact caught red-handed and FIR was registered against him and is presently under suspension. The learned counsel, in this regard, has referred to FIR 142 dated 3.10.2019 registered under Sections 15/21 of NDPS Act, 1985 and Section 61 of Punjab Excise Act, 1914 at Police Station Mahilpur, District Hoshiarpur which shows that upon search of the vehicle, which was being used by SI Dilbagh Singh, four polythene having '*poppy husk*', four bottles having liquor and a polythene having white coloured powder were recovered

from underneath the front seat of the vehicle. It has been submitted that the aforesaid recovery of the contraband duly packed in different packings clearly shows that the same was kept by SI Dilbagh Singh for the purpose of falsely implicating innocent persons.

4. The learned counsel for the petitioner has further submitted that infact the petitioner had been arrested on the evening of 3.6.2019 and that although SI Dilbagh Singh alongwith other police officials had taken away the DVR in respect of the CCTV cameras installed at the shop of the petitioner but the CCTV footage collected from the neighbouring shop clearly reveals the presence of SI Dilbagh Singh near the shop of the petitioner on the evening of 3.6.2019 and which infact substantiates the case of the petitioner that he was infact picked up from his shop. The learned counsel has further submitted that although two samples weighing 5 grams each were drawn in the present case but it remains unexplained as to how the sample which was deposited with FSL was found to be weighing 477 mg (0.5 mg). The learned counsel has submitted that in these circumstances, no sanctity can be attached to the report of the FSL as it is no guarantee that the sample analysed by the FSL was the same sample which had been drawn by the Magistrate, which was infact weighing 5 grams.
5. Opposing the petition, the learned State counsel has submitted that the genuineness of the photographs allegedly from the CCTV footage from a neighbouring shop is yet to be established and that in the present case the recovery was not effected just by SI Dilbagh Singh but was effected in the presence of DSP Prem Singh, which would definitely rule out false implication. The learned State counsel has further submitted that the report

of the FSL cannot be doubted in any manner since the sample received by the laboratory was found to be bearing the seal 'NK', as had been affixed before the Magistrate and it is specifically recorded in the report of the FSL that the seal was found to be intact and tallied with the specimen seal impression. It has further been submitted that the mere fact that SI Dilbagh Singh came himself to be involved in some case and is under suspension cannot lead to an inference that all the cases investigated by him are false cases.

6. I have considered the rival submissions addressed before this Court.
7. In view of the fact that the photographs stated to be part of CCTV footage show the presence of SI Dilbagh Singh, as is confirmed by learned State Counsel upon instructions from Inspector Sukhwinder Singh and the timings recorded in the photographs is of 3.6.2019 at about 6:57 p.m. and that the credentials of the said SI Dilbagh Singh are rather rendered doubtful as he was found to be in possession of small quantities of contraband, kept underneath the front seat of his car coupled with the fact that the report of FSL also rather creates some kind of doubt as the weight of the samples received by the FSL is much less than the sample which was drawn by the Magistrate, and while also keeping in view that the petitioner has already been behind bars since the last more than one year, further detention of the petitioner would not serve any useful purpose.
8. The petition, as such, is accepted and the petitioner is ordered to be released on regular bail on his furnishing bail bonds/surety bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

9. It is, however, clarified that none of the observations made above shall be taken to be an expression as regards merits of the main case and have been made only for the purpose of disposing of the aforesaid bail application.

17.9.2020

kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned
Whether Reportable

Yes / No
Yes / No