

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

201

CRM-M No.30387 of 2020 (O&M)
Date of Decision: December 7th, 2020

Mehar Chand @ Bhapa

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Prateek Gupta, Advocate
for the applicant-petitioner.

Mr. S.P.S. Tinna, Additional Advocate General, Punjab.

(PROCEEDINGS THROUGH V.C.)

AUGUSTINE GEORGE MASIH, J.

This is a second petition under Section 439 Cr.P.C. seeking regular bail in FIR No.0022 dated 30.01.2020 registered under Sections 21 and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the 'NDPS Act') at Police Station Special Task Force, STF Wing, District SAS Nagar. The first petition i.e. CRM-M-19993 of 2020 was dismissed as withdrawn on 19.08.2020.

Learned counsel for the petitioner submits that the petitioner is not named in the FIR and has been falsely implicated on the basis of the statement of a co-accused Ajay Kumar. It is asserted that there is no recovery effected from the petitioner of any intoxicant. For substantiating his contention that the petitioner has been falsely implicated in this case, reference has been made to the disclosure statement recorded under Section 27 of the Evidence Act of Ajay Kumar @ Kaku, who has given three statements dated 19.06.2020, 20.06.2020 and 21.06.2020 (Annexures P-5 to P-7). Referring to these disclosure statements, he asserts that in the earlier two disclosure statements, name of the petitioner does not figure. It is in the third disclosure statement dated 21.06.2020

(Annexure P-7) that the name of the petitioner is mentioned by alleging that he was helping Ajay Kumar @ Kaku in the smuggling of heroin. He asserts that the petitioner has been falsely implicated. He is 70 years of age and is suffering with age related illnesses and, therefore, the petitioner be granted the concession of bail.

Reliance has also been placed upon the judgment of the Supreme Court in *Gangadhar alias Gagaram Versus State of Madhya Pradesh 2020 (9) SCC 202* to contend that the presumption against the accused of culpability under Section 35 and under Section 54 of the NDPS Act to explain possession satisfactorily, are rebuttable. The presumptive provision with reverse burden of proof does not sanction conviction on the basis of preponderance of probability. Therefore, the petitioner at this stage deserves the concession of bail.

Custody certificate has been filed, according to which the petitioner is in custody for last more than five months. Perusal of the records would indicate that recovery of 1 kg and 28 grams of heroin along with electronic scale and 125 empty polythene pouches were made from Harjit Singh and Kewal Krishan while they were travelling in a car, which was on the basis of a secret information as they were going to supply heroin. On the basis of the disclosure statement of these persons, accused Ajay Kumar was arrested with further recovery of 352 grams of heroin and ₹10 lakh drug money being effected from him along with the motorcycle. The role which has been attributed to the petitioner on the basis of the disclosure statement of Ajay Kumar clearly indicates the involvement of the petitioner because it is the petitioner, who is asserting himself to be a contractor of FCI having contacts and connections with the officers and had

been helping Ajay Kumar @ Kaku in the smuggling of heroin. It has been stated by him that he started supplying heroin without fear on the asking of Mehar Chand. Share of the profit on selling heroin was given to Mehar Chand. It was on the support and encouragement that Ajay Kumar had increased the supply of heroin. It was also disclosed that a few days back, an amount of ₹5 lakh was given by him to petitioner-Mehar Chand @ Bhapa out of the money earned from the selling of heroin. On arrest of the petitioner, an amount of ₹4,50,000/- has been recovered, which is the drug money.

In the light of the above factual position, where commercial quantity of heroin from the co-accused and the drug money from the petitioner have been recovered, involvement of the petitioner in the commission of the offence cannot be ruled out at this stage.

In the light of the strict provisions of Section 37 of the NDPS Act, this Court does not find any ground for accepting the prayer of the petitioner for grant of bail. The judgment on which reliance has been placed by the learned counsel for the petitioner i.e. Gangadhar's case (supra), relates to a case where after the evidence has been led by the parties, the Court on evaluation of the said evidence, was making its comments, which would not be a case in hand. In the present case that stage has not yet reached as the prosecution has to lead its evidence.

In view of the above, the present petition stands dismissed at this stage.

December 7th, 2020
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No