

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

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CRM-M-30612-2020
Date of decision: 25.11.2020

Gurlal Singh

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. B.S.Kathuria, Advocate for the petitioner.

Mr. H.S.Multani, AAG, Punjab for the respondent-State.

SUVIR SEHGAL J. (ORAL)

The hearing of this petition has been taken up through video conferencing on account of the outbreak of novel corona virus.

In this second petition filed under Section 438 of the Code of Criminal Procedure, the petitioner, namely, Gurlal Singh son of Shri Davinder Singh, is seeking anticipatory bail in case FIR No.40 dated 12.03.2020 registered under Sections 21, 22, 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act'), under Section 3 of Indian Passports Act, 1920 and under Section 14 of Foreigners Act, 1946 at Police Station Lopoke, District Amritsar Rural, Punjab.

As per the version of the prosecution, FIR was registered on

the allegation that secret information was received that the accused-petitioner in collusion with his brother-in-law, Davinder Singh is involved in smuggling of heroin from across the international border and on that day, they were going around in a Mohindra XUV, PB-09-AH-0152 to supply heroin to a buyer. A naka was laid by the police party and co-accused, Davinder Singh, was apprehended with the vehicle, which is registered in the name of the accused-petitioner. After his arrest, co-accused took the police party to an area close to the India-Pakistan border and in the presence of the DSP, Sub Division, Attari and BSF officials, 8 packets were recovered, which were found to be containing 10 kg of heroin.

Counsel for the petitioner has argued that the petitioner has been falsely framed in the case as neither any recovery was effected from the petitioner nor he was arrested from the spot. He has urged that the petitioner has no nexus with the co-accused who has been arrested and from whom the alleged contraband has been recovered. Still further, he asserts that the petitioner has been arraigned as a co-accused on the basis of the disclosure statement of Davinder Singh, which was recorded in police custody and is, therefore, inadmissible in evidence. Still further, counsel submits that the petitioner is ready to join the investigation and extend all co-operation to the Investigating Agency.

Per contra, learned State counsel has opposed the petition, upon instructions from ASI Gurdeep Singh. He has submitted that the petitioner in connivance with the co-accused, Davinder Singh is involved in smuggling of the contraband from Pakistan and a huge recovery has

been effected. The vehicle being used for the nefarious activities is registered in the name of the petitioner. Still further, it has been urged by the State counsel, that the criminal past of the petitioner shows his bent of mind and involvement in offences under the NDPS Act.

I have considered the rival submissions of the parties.

The first petition seeking anticipatory bail (CRM-M-19067-2020) filed by the petitioner was withdrawn by his counsel, after arguments on 17.07.2020, Annexure P-3. During the course of arguments of the present petition, counsel for the petitioner urged that after the dismissal of the first petition, the prosecution has presented the challan on 07.09.2020 and the challan shows that there is no material with the prosecuting agency to connect the petitioner with the alleged smuggling. To test the submission made by the counsel, notice was issued to the State and in response thereto they filed a reply by way of affidavit of Gurpartap Singh Sahota, PPS, Deputy Superintendent of Police, Sub-Division, Attari, Amritsar Rural. Paras 3 to 6 of the affidavit filed by the State deserve to be noticed and are reproduced hereunder:-

“3. That during the course of investigation of the aforesaid case, the aforesaid Davinder Singh, who was coming in the above vehicle XUV Mahindra No.PB-09-AH-0152 was apprehended from the area of village Lodhi Gujjar, two mobile phones make I-phone and Samsung and Rs.300/- were recovered during his personal search. The same along with the above vehicle were taken into police possession.

4. That during interrogation, the above Davinder Singh disclosed that the present petitioner,

Gurlal Singh is his real brother-in-law (brother of wife). Gurlal Singh and his brother, Surjit Singh are involved in drugs smuggling for a long time. They have amassed a large number of properties and they have purchased big cars, JCB and tractor etc. They are involved in many FIRs of NDPS Act. Gurlal had told him (Davinder Singh) that he (Gurlal Singh) has links with smugglers of Pakistan and he used to get smuggled heroin through India-Pakistan Border by throwing it and thereafter they lift the same through their persons and further supply in different cities of India. Gurlal Singh allured him by saying that he (Davinder Singh) should also join them in drug smuggling. Therefore, he about one month ago had asked the petitioner, Gurlal Singh for providing him 2-4 packets of heroin so that he (Davinder Singh) could earn money. Gurlal Singh (petitioner) replied him that his consignment was to come from Pakistan and he would get the same soon. He (Davinder Singh) along with Gurlal Singh had gone towards border from village Kakkar to Lodhi Gujjar. Gurlal Singh had given him knowledge about the border. Gurlal Singh (petitioner) used to talk to smugglers of Pakistan and Gurlal Singh had made Davinder Singh also to talk to smugglers. They (Davinder Singh and Gurlal Singh) had gone near fencing of border near post of BSF Shanmullha and Gurlal Singh (petitioner) had told him that his consignment of heroin would be thrown in fields of wheat near one bunker of BSF in night. On that day, he (Davinder Singh) had come there for lifting the consignment, which was to be delivered further as per instructions of Gurlal Singh, but the consignment of 8 packets of heroin, which are packed

in one sack, are still lying at the above place and he can get the same recovered by making identification. Therefore, disclosure statement of Davinder Singh was recorded.

5. *That it is humbly submitted that thereafter, on the basis of disclosure statement suffered and identification made by the accused-Davinder Singh, 8 packets of heroin weighing 10 kg, which were packed in one plastic sack, were recovered in the presence of BSF officers/officials and deponent from the fields of wheat across fencing in area of BSF post Shamullha, which were taken into police possession in accordance with law.*

6. *That it is humbly submitted that during the course of investigation, the above accused, Davinder Singh has further disclosed that only his brother-in-law, Gurlal Singh (petitioner) knows that who was the consignee of the consignment of heroin as he (petitioner) had smuggled the above consignment while making contact with smugglers of Pakistan.”*

Considering the fact that on the disclosure statement of the co-accused, astronomically huge quantity of contraband has been recovered and the vehicle being used belongs to the petitioner and also the fact that in his disclosure statement, the co-accused has specifically named the petitioner, it becomes apparent that the petitioner is probably hand in glove with the co-accused and has indulged in the smuggling of contraband from across the international border. This Court is of the view that custodial interrogation of the petitioner is imperative.

Keeping in view the above facts and circumstances, no ground is made out for grant of anticipatory bail to the petitioner. The petition is,

accordingly, dismissed.

It is clarified that nothing said hereinabove shall be construed to be an expression on the merits of the case.

25.11.2020

pooja saini

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned : Yes/No

Whether Reportable : Yes/No