

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

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Date of decision:16.11.2020

1. CRM-M-36764 of 2020

Davinder Singh

... Petitioner

versus

State of Punjab

... Respondent

2. CRM-M-36879 of 2020

Baldev Krishan @ Babbu

... Petitioner

versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

Present: Mr.B.S.Bhalla, Advocate,
for the petitioners
Mr.P.S.Walia, AAG, Punjab
...

AMOL RATTAN SINGH, J. (Oral)

All cases listed today have been taken up for hearing by way of video conferencing because of the situation existing due to the Covid-19 pandemic.

By these two petitions, filed under the provisions of Section 439 of the Cr.P.C., the petitioners seek the concession of 'regular bail', upon FIR no.54, dated 21.6.2020, having been registered at Police Station Ajitwala, District Moga, alleging therein the commission of an offence punishable under Section 22 of the NDPS Act, 1985 (with Section 29 of the NDPS Act having been added later on).

Learned counsel for the petitioners in these two petitions relies

upon the orders passed by this court in CRM-M-28902 of 2020, admitting the co-accused of the petitioners, i.e. one Paras Sehgal, to bail.

In that petition, the following order was passed on 5.10.2020, reproducing therein the order earlier passed on 24.9.2020:-

“All cases listed today have been taken up for hearing by way of video conferencing because of the situation existing due to the COVID-19 pandemic.

On September 24, 2020, the following order had been passed:-

“All cases listed today have been taken up for hearing by way of video conferencing because of the situation existing due to the COVID-19 pandemic.

This petition has been filed under the provisions of Section 439 of the Cr.P.C., seeking 'regular bail' for the petitioner in case FIR no. 54, dated 21.06.2020, registered at Police Station Ajitwal, District Moga, for the alleged commission of an offence punishable under Section 22 of the NDPS Act, 1985.

Learned counsel for the petitioner points to the photographs annexed as Annexure P-2 (collectively) with this petition and submits that the petitioner was not actually arrested from the place that he is shown to be arrested in the FIR, i.e. near the CIA office in the area of Police Station Ajitwal but was actually arrested from his fathers' home in 'Peepyaan wali gali' in Moga, with the petitioners' own house being situated opposite the Civil

Hospital, Moga.

He submits that in fact the police had raided the petitioners' house on the morning of 21.06.2020 and had not found him present there, after which they went to his fathers' house at 11:45 a.m. and arrested him from there but showed him to be arrested in the area of CIA office at 03:30 p.m.

He points to the fact that nowhere in the FIR is it stated that the petitioners' house was raided and in fact he is alleged to have been arrested on secret information received and a picket ('Naka'), having been thereafter put up.

Mr. Bhalla further points to the fact that in fact the petitioners' car was also taken from the petitioners' house on 21.06.2020 at 05:53 a.m. and at that time in fact his co-accused, Davender Singh, had already been arrested, with him shown to be handcuffed in the photograph at page 8-A of Annexure P-2.

Hence, he submits that the entire recovery has been planted upon the petitioner and his co-accused.

Learned State counsel submits that he can only take instructions with regard to the above, though as per the FIR the contents are that the petitioner, along with his co-accused, were arrested at the place shown therein, with the car also belonging to the petitioner and with 5000 tablets of Clovidol SR recovered from him.

Keeping in view the above photograph shown, including especially one person shown to have been handcuffed in the aforesaid photograph, stated to be a person who otherwise is shown to be arrested along with the petitioner, without making any final comment on the matter as yet, the petitioner is ordered to be admitted to interim bail, upon his furnishing adequate bail bonds and surety bonds to the satisfaction of the trial court/CJM/Duty Magistrate, concerned, till the next date of hearing before this court.

Adjourned to 05.10.2020.

The SSP, Moga, is directed to go into the matter and to himself watch the video CD annexed with the petition, and to file his own affidavit in reply to each and every paragraph of the petition, including each and every content of each paragraph.

If the needful is not done, the SSP shall remain personally present in court on the next date of hearing itself, through video conferencing.”

Today, learned State counsel submits that due to the weekend the affidavit could not be filed though he has received it.

He further submits that a perusal of the said affidavit shows that the SSP has stated that the video recording was actually received from the family of the petitioner and that it does not match with the photographs produced in the petition.

Without making any comment on the correctness of that contention, learned counsel for the petitioner would hand over the CD in his possession to the State counsel, from which the photographs annexed with the petition have been taken.

Learned counsel for the State would go through that CD and would point out on the next date of hearing as to whether, in his opinion, the said video CD is the same as the one from which the photographs have been obtained.

For that purpose, adjourned to 07.10.2020.

Interim order to continue till then.

To be shown in the urgent motion list.”

Thereafter, the order dated 28.10.2020 reads as follows:-

“All the cases listed today have been taken up for hearing by way of video conferencing because of the situation existing due to the Covid-19 pandemic.

By this petition, filed under the provisions of Section 439 of the Cr.P.C, the petitioner seeks the concession of ‘regular bail’, upon FIR no.54, dated 21.06.2020, having been registered at Police Station Ajitwal, District Moga, alleging therein the commission of an offence punishable under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

Pursuant to the order dated August 26,2020, an affidavit of the SSP, Moga, has been filed, wherein it is eventually stated that due to discrepancies in the CCTV footage, as also the fact

that the number of the some of the vehicles and the faces of the persons are not clear, no conclusion can be drawn with regard to what is contained therein and in fact there may be some tampering in the footage.

Mr. Bhalla, learned counsel for the petitioner, submits that in any case, the report under Section 173 of the Cr.P.C. has been submitted to the competent court, arraigning the petitioner as an accused therein, which fact learned State counsel also concurs with on instructions.

Learned State counsel has submitted that the recovery of the contraband being 5000 tablets of 'tramadol', the petitioner does not deserves to be admitted to bail.

However, keeping in view the circumstances as enumerated in the previous order, as also the fact that his custodial interrogation is not required in any case, after the challan has been presented to the competent court, I would see no reason to dismiss the petition, though of course with it again made clear that nothing stated either in this order or in the previous orders passed would affect the merits of the trial, which naturally would be gone into by the trial court wholly on the basis of the evidence presented before it on both sides.

Therefore, without making any comment on the actual merits of the case, subject to the petitioner continuing to appear before the trial court as and when summoned, this petition is allowed, with the order admitting him to interim bail

made absolute.”

Mr.Bhalla, learned counsel for the petitioners in these cases, today submits that the present petitioners are no differently placed to the aforesaid Paras Sehgal and therefore they also having remained in custody for about 5 months now, with the trial still not having commenced, though the report under Section 173 of the Cr.P.C. has been submitted at the end of October 2020, they too deserve to be admitted to bail.

Though learned State counsel obviously opposes that the petitioners be admitted to bail with the recovery of the contraband (as per the case of the investigating agency), being commercial quantity, he could not deny on query that the petitioners are no differently placed to the person who has already been admitted to bail, i.e. Paras Sehgal.

That being so, without making any comment on the actual merits of the case, for the reasons already given in the orders passed in CRM-M-28902 of 2020, these petitions are allowed, with the petitioners ordered to be admitted to bail upon them furnishing adequate bail bonds and surety bonds to the satisfaction of the learned trial court/CJM/Duty Magistrate concerned.

A photocopy of this order be also placed on the file of other connected case.

16.11.2020

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Whether speaking/reasoned

Whether Reportable

(AMOL RATTAN SINGH)

JUDGE

Yes/No

Yes/No