

CRM-M-53110-2019 (O&M)

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

**CRM-M-53110-2019 (O&M).
Decided on: February 12, 2020.**

Visavjeet @ Sattu

.. Petitioner

VERSUS

State of Haryana

.. Respondent

*** * ***

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

*** * ***

**PRESENT Mr.Rakesh Nehra, Advocate,
for the petitioner.**

Mr.Munish Sharma, AAG, Haryana.

JASGURPREET SINGH PURI, J. (ORAL)

Through the present petition filed under Section 439 Cr.P.C., the petitioner prays for the grant of regular bail in FIR No.347 dated 30.07.2019, under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, registered at Police Station, Ganaur, District Sonapat.

Learned counsel for the petitioner has submitted that in the present case although there is alleged recovery of 2 Kg. 100 grams of *Charas* from the petitioner, the present case, in fact, was planted against the petitioner and he is not involved in the present case at all.

CRM-M-53110-2019 (O&M)

On 22.1.2020, the learned counsel for the petitioner had apprised this Court from the contents of the FIR that the occurrence in the present case was at the bus stand of village Khubdu, Police Station, Ganaur, District Sonapat, on 30.7.2019 at 4:30 PM and that there is a video recording of the petitioner to show that he was in fact arrested at 11:30 AM from his house i.e. five hours before the alleged time of arrest as stated in the FIR. He further stated that the tower locations of the mobile phones of the police officials present in the raiding party can also be verified to ascertain whether the said police officials were present at the place of alleged occurrence or not.

Taking serious note of the allegations which were levelled by the learned counsel for the petitioner specifically that arrest of the petitioner was allegedly made at 11:30 AM from the house of the petitioner and not from the bus stand, this Court had directed the Inspector General of Police, Rohtak Range, to file an affidavit in this regard.

Today affidavit of Mr.Sandeep Kumar, Inspector General of Police, Rohtak Range, Rohtak, has been filed which is taken on record.

Learned counsel for the petitioner has been supplied the copy of the affidavit and he has read the same during the pre-lunch session.

In the affidavit, it has been stated that in compliance of the orders passed by this Court, an inquiry into the subject matter was carried out by Sh.Jitender Singh, DSP, and copy of the same has been attached with the affidavit as Annexure R1 and the scope of the inquiry included previous background of the petitioner; evidence recorded so far in

CRM-M-53110-2019 (O&M)

the trial Court; investigation in the case file; video clippings submitted; call data records (CDRs) of relevant police officials and efforts were made to contact the family of the petitioner.

It has been stated in the affidavit that the petitioner has faced number of cases in the past including under the NDPS Act and the details of the same have been stated in para 4 of the affidavit. Further, it has been stated that acting upon information, a team of SCB officials namely ESI Amarjeet and ASI Naresh reached at Police Post Khubdu on 30.7.2019. As per the CDR of ESI Amrjeet, he was at Israna in District Panipat at about 11:12 AM on 30.7.2019 and ASI Naresh was also present at Israna at 11:12 AM as per his CDR. It has been further stated that Israna is at a distance of about 20 Kms from Khubdu. ASI Sanjay Kumar who was the initial investigating officer of the instant case, was present at District Sonapat Courts at around 11:24 AM on 30.7.2019 as per his CDR and this place is located at a distance of about 26 kms. from Khubdu. It has been stated that from the above, it is clear that the claim of the petitioner that he was actually picked up from his home at around 11:30 AM is not accurate as it is clear from the CDRs that relevant police officials were at a significant distance from village Khubdu at around 11:30 AM on 30.7.2019. It has been further stated in the affidavit that ASI Sanjay Kumar arrived at Police Post Khubdu from the Sonapat District Courts and as per his statement before DSP Jitender Singh, he reached PP Khubdu at around 12:40 PM and his CDR attests to his presence in Police Post Khubdu at 12:30 PM and at this point of time, he met up with ESI Amarjeet and ASI Naresh of SCB, who

CRM-M-53110-2019 (O&M)

shared information about the illicit activities of the petitioner. Further, in the instant case, the site of recovery of the contraband from the petitioner Visavjeet has been shown from the bus stand of village Khubdu and the petitioner's house is covered by the same towers of all the relevant telecom service providers and police post Khubdu is covered by separate towers of the telecom service provider. It has been further stated in the affidavit that ASI Sanjay Kumar and other relevant police officers have stated that on 30.7.2019 while they were at PP Khubdu, further secret information was received about the petitioner being present at the bus stand Khubdu carrying a red bag containing *sulfa* and that immediate action could result in the recovery of the contraband. Identification particulars are also reported to have been conveyed to the police party by the secret informant. A raiding party comprising of ASI Sanjay Kumar of PP Khubdu, ESI Amarjeet and ASI Naresh both of SCB and HJC Sudhir of PP Khubdu, was constituted and dispatched towards bus stand Khubdu. As per the statements of the police officials and case records, a special messenger was dispatched towards Police Station Gannaur for fulfillment of statutory provisions under Section 42 of the NDPS Act and as per the case records and statements of the police officials, the police team reached bus stand Khubdu at around 1:00 PM and their CDRs also corroborate this assertion. The petitioner was located at bus stand Khubdu, however he, detected the police party and tried to escape from the spot. The police party gave chase and managed to apprehend him. As per the statements of the police officials, the suspect, while fleeing as mentioned above, had managed to enter his house and the

CRM-M-53110-2019 (O&M)

police party had made an entry into his house to apprehend him. It has been further stated in the affidavit that so far as the video recording is concerned, although there is no specificity about the dates and timings of the video clips, the two video clippings of 20 seconds and 14 seconds respectively depict events within the petitioner's house and they jointly show the petitioner, his wife, ASI Sanjay Kumar, HC Sudhir, ESI Amarjeet and ASI Naresh to be present in the house and the video clips are shaky and appear to have been surreptitiously prepared. Thereafter, the petitioner was brought back to bus stand, Khubdu, whence he had fled and the distance between the petitioner's house and bus stand Khubdu has been measured by DSP Jitender Singh to be 390 meters. From the search of the petitioner, contraband i.e. *sulfa* weighing 2 kgs 100 gms, was recovered and thereafter, an FIR was registered.

Learned State counsel further submits that the submissions which have been made by the petitioner are not correct and that the petitioner although apprehended from the house, the same was not at 11:30 AM but after 1:00 P.M. when he fled away from the bus stand and went to his house from where he was apprehended and the alleged video clipping was made.

I have heard the learned counsel for the petitioner as well as the learned State counsel and have also gone through the record.

In the present case, the basic assertion which was made by the learned counsel for the petitioner is that the present FIR has been planted against the petitioner because the time of arrest mentioned in the

CRM-M-53110-2019 (O&M)

FIR was 4:30 PM whereas he was actually apprehended at 11:30 AM. So far as the timings mentioned in the FIR is concerned, the same is not the time of occurrence. It is only the time of the recording of the FIR and the fact that whether the petitioner was apprehended at 11:30 AM or not during the course of arguments, the learned counsel for the petitioner now stated that it was not 11:30 AM but it was 1:30 AM. Even otherwise, on the basis of the directions issued by this Court to verify this fact, the Inspector General of Police has filed an affidavit that inquiry has been made even with regard to the placement of the police officials who were in the raiding party during or around 11:30 AM. From the perusal of the affidavit, it is clear that officials of the raiding party were not around the house of the petitioner and were far away from the house of the petitioner at and around 11:30 AM. Therefore, the assertion made by the learned counsel for the petitioner does not carry any weight. The argument raised by the learned counsel for the petitioner that the fact that the petitioner was arrested from the house is not contained in the FIR or in the report under Section 173 (2) Cr.P.C., also does not carry any weight at the time of deciding the present bail application because it is during the evidence that the facts would come to light and the omission of recording of the fact that he was apprehended from his house would not *ipso facto* entitle the petitioner for the grant of concession of bail.

Out of 9 witnesses, 2 have been examined so far and both the investigating officers who are the material witnesses are yet to be examined. Apart from this, the total alleged recovery is of 2 kg and 100 grams of *sulpha/charas* which is a commercial quantity.

CRM-M-53110-2019 (O&M)

In view of the above and considering the totality of circumstances of the present case and the fact that two investigating officers who are material witnesses are yet to be examined, I do not deem it a fit case to admit the petitioner on regular bail and consequently, the present petition is hereby dismissed.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant for the purpose of deciding the present petition only.

February 12, 2020.
raj arora

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking / reasoned	Yes / No
Whether reportable	Yes / No