

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-2559-2021(O&M)

Date of decision:25.01.2021

Sukhpal Singh

.....Petitioner

Versus

State of Haryana

.....Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.D.N.Ganeriwala, Advocate for the petitioner

Ms. Kirti Singh, DAG, Haryana

ANIL KSHETARPAL, J.

This is second petition for grant of bail pending trial to the petitioner in a case arising from FIR No.7 dated 21.01.2020 registered under Section 17 of the NDPS Act, 1985 at Police Station Odhan, District Sirsa.

The first petition was disposed of on 03.11.2020 while disposing of four connected petitions filed for grant of bail. The order passed on 03.11.2020 reads as under:-

“By this order, 4 petitions for grant regular/pre-arrest bail, i.e., CRM-M No.15538, 20014, 24921 and 20048 of 2020 in criminal case arising from FIR No.7, dated 21.01.2020, registered under Section 17 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred to as “the Act of 1985”) Act No.61 of 1985, at Police Station Odhan, District Sirsa, Haryana, shall stand disposed of.

In three separate applications filed by Kanhaiya @ Kahna, Sukhpal Singh and Tejpal @

Teju, the prayer is to grant regular bail whereas Gautam Dass has filed an application for grant of anticipatory bail.

As per case of the prosecution, when the police team had gone for routine checking, two cars were suspiciously found parked on a Canal Bridge near Ashram of Dera Sacha Sauda. The concerned police official finding the suspicious activities stopped his vehicle and found that two persons were standing near the vehicles whereas three were occupying white colour I-10 car. The second car was Wagon R. On being questioned, they disclosed their names. Since, the police official suspected some narcotics, therefore, option as required under Section 50 of the Act of 1985 was given and consequently Sh. Satish Mehta, SDO Panchayati Raj, Odhan was called at the spot. On search, 6.500 Kg opium was allegedly recovered from a black coloured polythene bag held in the hand by Gauri Shankar @ Gauri.

Learned counsel for the petitioners contends that the Gazetted Officer referred to above was not authorized and, therefore, the proceedings of search and seizure was in violation of Section 50 of the Act of 1985. They further contended that on completion of the investigation, the challan has been presented on 26.06.2020 and, therefore, the petitioners be released on bail as the conclusion of the trial is likely to take lot of time.

Keeping in view the contentions raised, the State Government was called upon to explain as to how the Gazetted Officer from the Department of Panchayats was empowered. Pursuant thereto attention of this court has drawn to the order issued by Deputy Commissioner, Sirsa dated 17.09.2019 giving a list of Gazetted Officers who have been empowered/authorized in this regard. The aforesaid order was issued by the Deputy Commissioner pursuant to request made by Superintendent of Police, Sirsa on 12.09.2019. There is a reason behind writing such letter and issuance of the order. On 28.05.2019, the High Court while deciding various criminal miscellaneous petitions had directed government to publish the name of officers who have been empowered. It is in compliance thereto the order has been passed.

At this stage, it would not be appropriate to express any final opinion lest it may prejudice the case of any of the party, however, broadly it can be noticed that Section 50 of the Act of 1985 applicable to the search of any person. In the present case,

various accused as well as the container i.e. polythene bag were searched. Recently, a larger Bench of the Supreme Court in ***State of Punjab Vs. Baljinder Singh and another, (2019) 10 SCC 473*** interpreted the provision of Section 50 of the Act of 1985 and held that the search of a person may be in violation of Section 50 of the Act of 1985. However, search of the container or premises or vehicle would not fall within the scope of Section 50 of the Act of 1985. Their Lordship held that the search of person may be in violation of Section 50 of the Act of 1985 but that 'ipso facto' would not result in vitiating the search of the container, vehicle or premises. The Larger Bench relied upon two previous judgments in ***Ajmer Singh Vs. State of Haryana (2010) 3 SCC 746*** where it was held that search of a bag held by the accused would not be covered by Section 50 of the Act of 1985. Similarly, reliance was also placed on the judgment in ***Madan Lal and another Vs. State of Himachal Pradesh, (2003) 7 SCC 465***. In the present case as noted above, 6.500 Kg opium was recovered from black coloured polythene bag held by Gauri Shankar-accused.

This aspect can be further examined from another angle. Section 50 of the Act of 1985 refers to Sections 41, 42 and 43 of the Act. On careful reading of Section 42, it is apparent that the Parliament while enacting the Act did specify that the Gazetted Officers before whom the search can be carried out must be posted in some particular department(s) enlisted therein. Apart from enlisting certain Departments in Section 42, the Parliament uses the phrase 'any other department' of the Central or the State Government. Thus, the Gazetted Officer can be from any Department. Only requirement is that he should be empowered in this behalf by general or special order by the Central or the State Government. It may be noted here that it is not the argument of learned counsel for the petitioners that the order passed by the Deputy Commissioner is not on behalf of the State Government or the concerned Deputy Commissioner was not authorized to issue such list.

In view of the aforesaid discussion, this Court expresses its inability to accept the argument of learned counsel for the petitioners. This takes me to the next submission of learned counsels. It has been contended that on completion of investigation, challan has been presented, therefore, the petitioner should be granted the concession of bail. It may be noted here that the recovery in the present case falls

in the category of commercial quantity as notified by the Government. Section 37 of the Act of 1985 makes it mandatory to the Courts to apply the requirements prescribed before grant of bail. It has been provided that the Courts should be in a position to record satisfaction that there are reasonable grounds for believing that accused are not guilty of such offence and that they not likely to commit any offence while on bail. In the present case, Kanhaiya @ Kahna is a resident of State of Madhya Pradesh. He is involved in yet another case under the Act of 1985. Whereas Sukhpal was involved in two criminal cases under the Indian Penal Code, out of which, in one, he has been acquitted whereas second is pending. The recovery in the present case is way more than the quantity from where commercial category starts.

Now, let us consider the application of Gautam Dass for grant of pre-arrest bail.

On careful reading of the FIR, it is apparent that Gautam Dass has been named in the FIR itself as a supplier. The accused apprehended at the spot had at that very moment, disclosed that Gautam Dass had supplied the aforesaid opium. Gautam Dass is the father of Kanhaiya - accused (one of the petitioner herein). Keeping in view the aforesaid facts, Gautam Dass cannot be stated to be totally stranger or unrelated.

In these cases, custodial interrogation plays significant part because it is necessary to break supply chain of the narcotics responsible for spoiling our youth in the country.

In view of the aforesaid discussion, in the considered view of this Court, the petitioners do not deserve to be granted concession of bail/pre-arrest bail.

Accordingly, all the petitions are dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the aforesaid order.”

Learned counsel for the petitioner contends that as alleged the petitioner was present at the spot as a prospective buyer and therefore, the petitioner cannot be said to be in conscious possession of the opium.

This Court has considered the submissions. This contention

is the subject matter of trial. In view of the detailed order passed on 03.11.2020, no further ground for bail is made out. However, the petitioner shall be at liberty to file an application for interim bail before the learned trial court for the reasons stated in the application.

Disposed of.

25.01.2021

rekha

Whether speaking/reasoned

Whether Reportable

Yes /No

Yes / No

(ANIL KSHETARPAL)

JUDGE