

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

219

CRM-M-6715 of 2021
Decided on 06.09.2021

Ajit Kumar @ Amit Kumar

.....Petitioner

VERSUS

State of Haryana

.....Respondent

CORAM : HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

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

Mr.Deepak Grewal, DAG, Haryana.

(Through video conferencing)

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for grant of regular bail in case FIR No.258 dated 10.09.2019 under Sections 22C of NDPS Act, 1985, Police Station Sadar Dabwali, District Sirsa.

This is third petition for grant of regular bail.

Learned counsel for the petitioner submits that earlier one was dismissed as withdrawn on 29.01.2020 and in second one, interim bail was granted to the petitioner on account of the marriage of his sister on 05.03.2020.

The fresh application has been filed on account of the fact that petitioner is in custody for about 2 years and the trial is not proceeding and in the intervening period, the petitioner has been acquitted in some other FIR and released on bail in one case i.e. FIR No.135 under the NDPS Act.

Brief facts of the case are that as per FIR, ASI Salender Kumar, while on patrol duty, received a secret information that Ajit Kumar alias Amit Kumar (petitioner) is indulging in selling of intoxicant

substance and can be apprehended with such substance.

On this, the complainant laid a barrier and after some time a young man was seen coming with the plastic bag. He became nervous on seeing the police party and tried to run away but he was apprehended by ASI Salender Kumar and co-officials. On inquiry, he told his name Ajit Kumar @ Amit Kumar and then he was given a notice to be searched before a Magistrate or a Gazetted Officer. Thereafter, DSP was called at the spot and 24980 intoxicant tablets were recovered from the petitioner.

Counsel for the petitioner has referred to an order dated 07.09.2019 passed by the Additional Sessions Judge, Sirsa, vide which, the petitioner was granted the concession of anticipatory bail in FIR No.135 dated 14.06.2019 under Section 22 (B) of NDPS Act, Police Station, Sadar Dabwali. Learned counsel submits that while granting anticipatory bail, the Additional Sessions Judge, Sirsa, noticed the fact that the petitioner has enmity with the police officials and the petitioner was falsely implicated earlier also and has filed a complaint titled as **Ajit Kumar Vs. Sandeep Kumar P/SI and Others** under Sections 217, 218, 219, 192, 196, 323, 341, 342, 427, 452, 506, 120-B IPC and the same is pending.

The Additional Sessions Judge, Sirsa, noticing the fact that false implication cannot be ruled out granted anticipatory bail to the petitioner in FIR No.135.

The counsel submits that this order was passed on 07.09.2019 and just two days thereafter, on 09.09.2019, the present FIR was registered by the same investigating office ASI Salender Kumar in

the same police station.

The counsel submits that during investigation, the petitioner has already moved an application under Section 91 Cr.P.C. before the trial Court, for preserving the call details records and the tower location of the numbers given in the application as he was picked up from his house a day prior to the registration of the FIR by ASI Salender Kumar and later falsely implicated in this FIR.

It is also submitted that vide order dated 02.09.2020, the Additional Session Judge, Sirsa has allowed the said application.

The counsel has next argued that in two other FIRs in the same Police Station Sadar Dabwali registered under NDPS Act, the petitioner stands acquitted by the trial Court and therefore, *mala fide* on the part of the police who repeatedly involved the petitioner in false cases is apparent on record. The counsel has lastly argued that a period of two years has elapsed and till date no prosecution witness has been examined as the prosecution is delaying the trial.

On 18.02.2021, the Investigating Officer was directed to file a specific allegation with regard to the allegation levelled against ASI Salender Kumar. The affidavit of ASI Salender Kumar is taken on record and a perusal of the same reveals that he has not given any reply with regard to allegation levelled against him regarding repeatedly involving the petitioner in cases under NDPS Act.

The Learned State counsel could not dispute that on the basis of custody certificate, petitioner has completed two years of judicial custody and out of 14, no prosecution witness has been examined so far.

However, he submits that due to Covid-19 pandemic, the trial was delayed.

After hearing counsel for the petitioner and considering his submissions, I find that the petitioner has taken a consistent stands in the previous FIR that he has repeatedly been involved by ASI Salender Kumar in cases under the NDPS Act as it is reflected in the earlier order passed by Additional Session Judge, Sirsa, while granting him anticipatory bail in FIR No.135 and also in the order passed under Section 91 Cr.P.C. for preserving the call records in this case.

Accordingly, this petition is allowed and the petitioner is ordered to be released on regular bail on their furnishing bail/surety bonds to the satisfaction of the trial Court/Illaqa Magistrate concerned.

In the interest of justice, it is deemed appropriate to direct the Superintendent of Police, Sirsa, to depute a senior police official not below the rank of ACP to reverify the entire investigation including the call details records which has been preserved in terms of the order dated 02.09.2020 passed by Additional Sessions Judge, Sirsa, and give a specific findings with regard to the allegation of the petitioner about his false implication at the hands of ASI Salender Kumar.

The Inquiry Report be submitted within a period of two months to this Court.

(ARVIND SINGH SANGWAN)
JUDGE

06.09.2021

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<i>Whether speaking/reasoned :</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>