

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

(I) CRM-M-9792-2020 (O&M)

Amarjit Singh

...Petitioner

Versus

Union of India through Intelligence Officer, Narcotics Control Bureau,
Amritsar

...Respondent

(II) CRM-M-22182-2020 (O&M)

Yadwinder Singh

...Petitioner

Versus

Union of India through Intelligence Officer, Narcotics Control Bureau,
Amritsar

...Respondent

Date of Decision: 22.11.2021

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Atul Lakhanpal, Advocate, for the petitioner
in CRM-M-9792-2020.

Mr. G.S.Hayer, Advocate, for the petitioner
in CRM-M-22182-2020.

Ms. Puneeta Sethi, Advocate, for the respondent.

(proceedings conducted through video conferencing)

GURVINDER SINGH GILL, J.

1. This order shall dispose of the aforesaid two petitions i.e. CRM-M-9792-2020 and CRM-M-22182-2020 filed on behalf of the petitioners, namely, Amarjit Singh and Yadwinder Singh respectively, seeking grant of regular bail in respect of a complaint

case registered against them vide NCB Crime No.16/2019 dated 30.03.2019 under Sections 8/15/29/60 of the NDPS Act.

2. It is the case of the prosecution that on 29.03.2019, a secret information was received by T. Anil Kumar, Intelligence Officer, NCB, Chandigarh to the effect that two persons, namely, Amarjit Singh and Yadwinder Singh indulged in trafficking of opium poppy straw and that even on the given day, they were transporting huge quantity of opium poppy straw in a truck bearing registration No.PB-04-AB-2445 and would reach near Toll Plaza, Chand Purana, Moga-Kotkapura road at about 10:00-11:00 PM. Pursuant to receipt of said information, a raiding party comprising of officials of NCB, Chandigarh and headed by Avdesh Kumar, Intelligence Officer was constituted, who reached the Toll Plaza, Chand Purana and associated independent witnesses. At about 10:35 PM, a truck bearing registration No.PB-04-AB-2445 approached the Toll Plaza, Chand Purana and was signaled to stop. Avdesh Kumar, Intelligence Officer, introduced himself to driver of the truck and his associate. While the driver of the truck introduced himself as Amarjit Singh, the person sitting alongwith him disclosed his name as Yadwinder Singh. Upon enquiry, they initially denied carrying any contraband, but later reluctantly disclosed that they were carrying bags containing onions, which was loaded in the truck from Indore (Madhya Pradesh), which were to be delivered at Jalandhar and that beneath the said bags, 20 bags containing poppy husk/straw had been kept concealed. However, since labourers could not be arranged for unloading the

onion bags underneath which bags containing poppy husk/straw were stated to be concealed, it was only around 3:30 AM on the next day i.e. 30.03.2019 that the onion bags were unloaded and 20 plastic bags of black colour containing poppy husk were recovered. The total weight of the recovered bags worked out to 580.010 Kgs.

3. It is further the case of the prosecution that both the accused suffered voluntary statements in terms of Section 67 of the NDPS Act. Amarjit Singh is said to have disclosed that while they had loaded 404 bags of onions at Indore for the purpose of delivering the same at Jalandhar, they had met Shahrukh Khan @ Shahrukh at Jaora at Moga Dhaba, who gave 20 bags containing poppy husk/straw which he alongwith his co-accused Yadwinder Singh loaded in the truck beneath the bags of onions. He further disclosed that the said bags were to be delivered to a person, namely, Bittu in Moga. Samples were drawn from the recovered contraband and were got analyzed and as per the report of the Chemical Examiner, the same was found to be 'poppy straw'.
4. Learned counsel for the petitioners have submitted that they have falsely been implicated in the present case and that the entire complaint is based mainly on statements of the accused recorded in terms of Section 67 of the NDPS Act, whereas such statements have been held to be inadmissible as per the reference answered by Hon'ble Supreme Court in Tofan Singh Vs. State of Tamil Nadu, (2021) 4 SCC 1 [Criminal Appeal No.152 of 2013 decided on 29.10.2020].

5. Learned counsel have next submitted that the story put-forth by the prosecution is highly improbable inasmuch as while on one hand, the case of the prosecution is that the truck upon being intercepted could not be unloaded during the night on 29.03.2019, as several labourers were required, who could not be arranged for and that it was on the next day that such process could be completed, but on the other hand, the case of the prosecution is that at the time of loading bags of poppy husk in the truck both the accused themselves removed the onion bags and placed the bags containing poppy straw underneath the bags containing onions in a short time.
6. Learned counsel appearing on behalf of the petitioner – Yadwinder Singh has additionally submitted that he is merely a helper employed with the owner of the truck and is not involved in any other case and as such, cannot be attributed conscious possession of the contraband in question.
7. Learned counsel representing the NCB has vehemently opposed the petitions on the ground that it is a case where both the accused pursuant to receipt of secret information were caught red-handed while travelling in a truck, which was found to be carrying huge quantity of poppy straw and as such, they cannot feign ignorance about the contents of the bags containing poppy straw, which were kept concealed by them in the truck beneath the bags of onions. Learned counsel has, thus, prayed for dismissal of the petitions.
8. I have considered rival submissions addressed before this Court.
9. As far as the proposition of law in respect of statements recorded in terms of Section 67 of the NDPS Act is concerned, the Hon'ble

Supreme Court in Tofan Singh's case has set at rest the controversy addressed while holding as under:

“155. We answer the reference by stating:

- (i) That the officers who are invested with powers under section 53 of the NDPS Act are “police officers” within the meaning of section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act.
- (ii) That a statement recorded under section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act.”

10. The ratio of the aforesaid judgment is very clear to the effect that any confessional statement in terms of Section 67 of the NDPS Act would be hit by provisions of Section 25 of the Evidence Act. However, the position may be slightly different, if pursuant to any such statement some recovery is also effected and in which case it would be governed by provisions of Section 27 of the Evidence Act. It will not be out of place to mention here that recently this Court in Abhijeet Singh Vs. Narcotics Control Bureau, Chandigarh, 2021 (3) RCR (Criminal) 285 pertaining to a matter regarding grant of bail in a case registered under the NDPS Act, wherein also Tofan Singh's case (supra) had been cited, observed that while judgment in Tofan Singh's case (supra) was rendered on 29.10.2020, earlier the legal position regarding admissibility was considered in light ratio of two earlier decisions of Supreme Court

i.e. Raj Kumar Karwal Vs. Union of India, (1990) 2 SCC 409 and Kanhaiyalal Vs. Union of India, (2008) 4 SCC 668, as per which such statements were admissible. In the said case, as in the present case, the occurrence had taken place prior to 29.10.2020. The said bail application was ultimately dismissed, mainly on the ground that case was not solely based on statements under Section 67 of the NDPS Act, but there was other evidence to establish factum of recovery of contraband. In any case, the accused herein were caught red-handed while transporting huge quantity of poppy straw in a clandestine manner in the truck by concealing the bags of poppy straw underneath the bags of onions. Thus, even if the statements of the accused recorded in terms of Section 67 of the NDPS Act are ignored, still the accused were expected to furnish some justifiable explanation for having kept concealed huge quantity of poppy straw in their truck which they have not come out with. Petitioner – Amarjit Singh is found to be owner of the truck in question, apart from the fact that he was also driving the same and as such, would have domain over the truck and would be well aware about the articles loaded in his truck. Further, since the co-accused Yadwinder Singh had also helped him in loading the bags containing poppy straw, he also cannot escape from his liability on account of the recovery of huge quantity of contraband.

11. As far as the contention of the petitioners regarding improbabilities of the case of prosecution is concerned, the unloading of bags from the truck by two persons would indeed be a tough task, but a person, who has a personal interest in the same like the accused,

who were into smuggling or drug trafficking, would not hesitate to put in extra labour and would rather prefer that other persons are not associated to minimize chances of detection so as to ensure that their designs are fruitful. In any case, there is nothing on record to show as to how much time was taken by the accused in unloading the onion bags and loading the bags of poppy straw and as such, the aforesaid contention cannot prevail at this stage.

12. In view of the discussion made above, the involvement of both the petitioners is clearly evident. There is nothing on record to show that in case released on bail, they would not indulge in similar offence again. Even otherwise, the recovered quantity of contraband, which falls in the category of 'commercial quantity', would attract fetters imposed by Section 37 of the NDPS Act in the matter of grant of bail. Hon'ble Apex Court in a recent judgment i.e. State of Kerala Vs. Rajesh Kumar, 2020(1) RCR(Criminal) 818, has reiterated the legal position as regards the limitations imposed by Section 37 of the NDPS Act and has further held that a liberal approach in matters of bail in offences under NDPS Act is uncalled for. There is nothing on record at this stage from which it could be inferred that the petitioners are not guilty of the offence in question. Both the petitions are found to be sans merit and are hereby dismissed.

22.11.2021

Vimal

(GURVINDER SINGH GILL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No