

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

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CRM-M-13324 of 2021

Date of decision:28.7.2021

Sandeep Singh

... Petitioner

versus

State of Punjab

... Respondent

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

Present: Mr.T.S.Grewal, Advocate,
for the petitioner
Mr.Ramdeep Partap Singh, DAG, Punjab
...

AMOL RATTAN SINGH, J. (Oral)

Case heard via video conferencing.

By this petition, the petitioner seeks the concession of bail under the provisions of Section 439 of the Cr.P.C., upon FIR no.137, dated 14.5.2020, having been registered at Police Station City, Sunam, District Sangrur, alleging therein the commission of offences punishable under Sections 21/25/29 of the NDPS Act, 1985.

On 20.7.2021, the following order had been passed by this court (after orders having been passed prior thereto also):-

“Case heard via video conferencing.

An affidavit of the Deputy Superintendent of Police, Sunam, District Sangrur, dated 13.07.2021, having been filed, it is ordered to be taken on record; from which learned counsel for the petitioner points out that it has been admitted that the recovery of the driving licence and Aadhar card admittedly did not find any mention in the report submitted under the provisions of Section 173 (2) of the Cr.P.C., though it is stated

that they were annexed as a list of articles appended to the 'challan'. He submits that that shows that actually no such recovery was made from the car at the time shown in the FIR, with the petitioners' mother having been later forced by the police to produce the said documents.

He has also pointed to Sections 52 and 55 of the NDPS Act, 1985, to submit that it was mandatorily required of the arresting officer/the officer recovering the articles, to present them at the first instance to his superior, i.e. the SHO of the police station concerned.

Learned State counsel however counters by saying that the said provision would only apply to contraband that is seized and not any other article seized during the arresting/recovery process.

For both learned counsel to point out specifically to the relevant provisions contained in Sections 41 to 44 and to address arguments thereafter, adjourned to 23.07.2021.”

Today, Mr.Grewal, learned counsel for the petitioner, has taken this court again through the provisions of Sections 41 and 42 of the NDPS Act, 1985, and thereafter specifically points to Section 52, which reads as follows:-

“52. Disposal of persons arrested and articles seized.—

(1) Any officer arresting a person under section 41, section 42, section 43 or section 44 shall, as soon as may be, inform him of the grounds for such arrest.

(2) Every person arrested and article seized under warrant issued under sub-section (1) of section 41 shall be forwarded without unnecessary delay to the Magistrate by whom the warrant was issued.

(3) Every person arrested and article seized under sub-section (2) of section 41, section 42, section 43 or section 44 shall be forwarded without unnecessary delay to—

(a) the officer-in-charge of the nearest police station, or

(b) the officer empowered under section 53.

(4) The authority or officer to whom any person or article is forwarded under sub-section (2) or sub-section (3) shall, with all convenient despatch, take such measures as may be necessary for the disposal according to law of such person or article.”

Similarly, he points to Section 55, which reads as follows:-

“55. Police to take charge of articles seized and delivered.—

An officer-in-charge of a police station shall take charge of and keep in safe custody, pending the orders of the Magistrate, all articles seized under this Act within the local area of that police station and which may be delivered to him, and shall allow any officer who may accompany such articles to the police station or who may be deputed for the purpose, to affix his seal to such articles or to take samples of and from them and all samples so taken shall also be sealed with a seal of the officer-in-charge of the police station.”

He submits that thus though the alleged recovery of the petitioners' driving licence and Aadhar Card are mentioned in the proceedings shown to be recorded after the FIR was registered, and a recovery memo with regard to such recovery was also prepared, however, the said articles were never actually sealed and handed over to the SHO and such seizure, 'sealing' and handing over to a superior officer (SHO of the police station) along with the contraband does not even find mention in the report submitted under Section 173 of the Cr.P.C.

He therefore submits that there being a gross violation of the essential provisions of the Act of 1985, the petitioner in any case deserves to be admitted to bail despite the bar contained in Section 37 of the said Act.

Mr. Ramdeep Partap Singh, learned DAG, Punjab, on the other hand submits that whatever has been contended by learned counsel for the petitioner would all be a matter of evidence to be led before the trial court and therefore the bar contained in Section 37 would apply and consequently the petitioner is not entitled to the concession of bail.

Upon query to him, he however does not deny that even the co-accused (mother of the petitioner) who is stated to have been arrested at the spot as per the case of the prosecution, was admitted to bail by the Sessions court itself, though with that order cancelled subsequently but with the cancellation order having been stayed by this court.

Upon further query, he submits that as per the custody certificate supplied to him, there is no other criminal case registered against the petitioner.

Keeping in view all the above circumstances specifically the

alleged violation of the statutory provisions contained in Sections 52 and 55 of the Act of 1985, with the driving licence and the Aadhar Card of the petitioner being documents allegedly recovered on the spot but with the petitioner wholly denying such recovery and submitting that the case has been entirely planted upon him, with him not apprehended at the spot in any case even as per the case of the prosecution, without making any further comment on the matter which would naturally be gone into by the trial court as per evidence led before it, in my opinion again it is an appropriate case where there are reasonable grounds to admit the petitioner to bail in terms of sub-clause (ii) of clause (b) of sub-section (1) of Section 37 of the NDPS Act, 1985.

Consequently, this petition is allowed, with the petitioner ordered to be admitted to bail to the satisfaction of the learned trial court, upon him furnishing adequate bail and surety bonds.

28.7.2021
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(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No