

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

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**CRM-M-13364-2020
Date of decision: 16.03.2021**

HARDEEP SINGH @ BILLA

.....Petitioner

Versus

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Dr. Anmol Rattan Sidhu, Senior Advocate
with Mr. Raghav Gulati and
Mr. Arshdeep Singh Brar, Advocate
for the petitioner.

Mr. P.S. Walia, Asstt. A.G., Punjab
for the respondent-State.

ARUN KUMAR TYAGI, J (ORAL)

(The case has been taken up for hearing through video conferencing.)

The petitioner has filed the present (first) petition under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail in case FIR No.15 dated 06.02.2020 registered under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act') in Police Station Sadar Faridkot, District Faridkot to which Sections 22 and 29 of the NDPS Act and Sections 420, 465, 471 and 120-B of the Indian Penal Code, 1860 (for short 'the IPC') were added later on.

As per the prosecution version, on 06.02.2020, at about 03.30 P.M., the police party headed by ASI Kultar Singh stopped white Creta Car bearing registration No. PB-09AE 7021 with Hardeep Singh @ Billa (the petitioner), driver and Tarsem Singh @ Sandhu, co-

passenger on suspicion as to the above said persons having some contraband in their conscious possession. On being informed ASI Harbans Singh reached the spot. On search in the presence of Gurpreet Singh, Dy. S.P., Sub-Division Faridkot recovery of opium weighing 505 grams was made from possession of Hardeep Singh @ Billa and opium weighing 507 grams was recovered from possession of Tarsem Singh @ Sandhu. The above said FIR was registered under Section 18 of the NDPS Act against them and they were arrested in the case. During investigation Hardeep Singh @ Billa made disclosure statement and recovery of 20320 tablets containing psychotropic substances, as mentioned in the FSL report, and fake police identity card was made from his house in accordance with his disclosure statement. Accordingly, Sections 22 and 29 of the NDPS Act and Sections 420, 465, 471, 120-B of the IPC were added to the FIR. In view of disclosure statement of Hardeep Singh @ Billa, Gurpreet Kumar @ Manu and Mukesh Chand @ Rinku were also nominated as accused but Gurpreet Kumar @ Manu was declared innocent. On completion of the investigation the police filed charge-sheet against the petitioner and his co-accused Tarsem Singh @ Sandhu and Mukesh Chand @ Rinku.

The petitioner being in custody has filed the present petition for grant of regular bail.

The petition has been opposed by learned State Counsel in terms of reply filed by way of affidavit of Satvinder Singh, PPS, Deputy Superintendent of Police, Sub Division Faridkot.

I have heard learned Counsel for the petitioner and learned State Counsel and gone through the relevant record.

Learned Senior Counsel for the petitioner has submitted that the petitioner owns a Chemist Shop at village Golewala, District Faridkot and is having the requisite licence. On 21.08.2019, an altercation took place between the petitioner and Lakhwinder Singh brother of Veerpal Singh, posted as Head Constable at City Faridkot, on refusal of the petitioner to supply him medicine without payment of money. Lakhwinder Singh alongwith Veerpal Singh and some other persons armed with belts and baseball bats reached his shop, started pelting stones at his shop and damaged the counter. The petitioner approached the Sarpanch who reported the matter to the police which was subsequently compromised. The petitioner has been falsely implicated due to enmity of the above said incident at the instance of Veerpal Singh. On 06.02.2020, the petitioner alongwith his co-accused Tarsem Singh was returning from Moga to Golewala in his Creta Car and at about 09.00 A.M. when they crossed Kot Karor Toll Plaza they were intercepted by the police party. The petitioner was taken to village Golewala by the police party in Innova Car whereas Tarsem Singh @ Sandhu and Creta Car of the petitioner were taken to Gate No. 1 of SSP Residence. Thereafter Tarsem Singh @ Sandhu was taken by the police party at village Golewala. The shop of the petitioner was raided by the police party with Harjinder Singh, DCO, Faridkot at about 10.20 A.M. but nothing objectionable was found there. The police party remained at Golewala from 10.20 A.M. to 04.00 P.M. The Creta Car remained parked at the official residence of SSP Faridkot from morning till 04.00 P.M. and the said Car was not taken to Golewala on 06.02.2020 where the alleged recovery was stated to have been effected. Thereafter, the

petitioner was taken to his house and nothing objectionable was found there. The petitioner was asked to give illegal gratification and on his refusal alleged recovery was falsely planted on him. In his report dated 06.02.2020 prepared at 12.05 P.M., which was also signed by ASI Kulbir Chand, Incharge CIA, Jaitu, Harjinder Singh, DCO, Faridkot recorded that shop of the petitioner was inspected as per written letter received from CIA Staff Jaitu and telephonic call from ASI Kulbir Chand at 12.10 P.M.; that at the time of the inspection nothing objectionable was found from the shop of the petitioner and that as informed by ASI Kulbir Chand the petitioner was already in police custody in FIR registered under Section 18 of the NDPS Act. As per the prosecution version the petitioner was allegedly apprehended at 03.30 P.M. and on the basis of alleged recovery FIR was registered at 07.30 P.M. which is materially contradicted by report prepared by Harjinder Singh, DCO, Faridkot and signed by ASI Kulbir Chand, Incharge CIA Staff, Jaitu according to which the petitioner was already in custody of the police at the time of raid on his shop which fact makes the case of the prosecution as to time of his arrest and recovery of contraband from the petitioner wholly unreliable. There is no explanation as to why Harjinder Singh, DCO, Faridkot or some other official from his office was not joined at the time of alleged recovery of drugs from the house of the petitioner. Fake identity card is alleged to have been recovered from the house of the petitioner but Gurpreet Kumar @ Manu who was alleged to have prepared the same was declared as innocent. There is more than prima facie case of false implication of the petitioner. The petitioner is not involved in any other case under the NDPS Act. There

are reasonable grounds for believing that the petitioner is not guilty and that keeping in view of his antecedents there is no likelihood of the petitioner of committing any offence under the NDPS Act. The rigors of Section 37(1)(b) of the NDPS Act are fully satisfied. Trial is likely to take long time due to restrictions imposed to prevent spread of infection of Covid-19. No useful purpose will be served by keeping the petitioner in custody. Therefore, the petitioner may be ordered to be released on regular bail.

In support of his arguments, learned Senior Counsel for the petitioner has placed reliance on the observations made by Hon'ble Supreme Court in its judgment in *Union of India Vs. Shri Shiv Shankar Kesari : 2007(4) RCR (Cri) 186 (SC)*.

On the other hand, learned State Counsel has argued that the petitioner and his co-accused Tarsem Singh @ Sandhu are accused of having kept non-commercial quantity of opium in their conscious possession on 06.02.2020 and the petitioner is also accused of having kept commercial quantity of contraband drugs and fake Identity Card in his conscious possession in his house. The petitioner thereby committed heinous offences. In view of the nature of accusation and gravity of offences and rigors of Section 37(1)(b) of the NDPS Act, the petitioner does not deserve the concession of regular bail. Therefore, the petition may be dismissed.

However, learned State Counsel has conceded that the petitioner is not involved in any other case under the NDPS Act.

In the present case prima facie there is material contradiction as to time and place of alleged recovery and arrest of the

petitioner on 06.02.2020 as in his inspection report prepared at 12.05 P.M., Harjinder Singh, DCO, Faridkot mentioned that as informed by ASI Kulbir Chand, Incharge, CIA Staff, Jaitu the petitioner was already in police custody in FIR registered under Section 18 of the NDPS Act whereas as per the version given in the FIR the petitioner was apprehended at 03.30 P.M. and FIR was registered at 08.33 P.M. and Harjinder Singh, DCO, Faridkot or any other independent witness was not joined at the time of alleged recovery from house of the petitioner. It is also admitted that the petitioner is not involved in any other case under the NDPS Act. These facts and circumstances of the case furnish reasonable grounds to believe that the petitioner has not committed the alleged offences and the petitioner is not likely to commit any offence under the NDPS Act and satisfy the rigors of Section 37 (1) (b) of the NDPS Act.

In view of the observations made by Hon'ble Supreme Court in *Union of India Vs. Shri Shiv Shankar Kesari : 2007(4) RCR (CrI) 186* and above referred facts and circumstances of the case, the period of custody of the petitioner and also the fact that the trial is likely to take long time due to restrictions imposed to prevent the spread of infection of Covid-19, but without expressing any opinion on merits of the case, I am of the considered view that the petitioner deserves the concession of regular bail.

Accordingly, the petition is allowed and the petitioner is ordered to be released on regular bail on furnishing of personal and surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

However, the petitioner is granted regular bail subject to the condition that after his release on bail, he shall not commit any offence under the NDPS Act and in case of commission of any offence under the NDPS Act by him after his release on bail, his bail in the present case shall also be liable to be cancelled on application to be filed in this regard.

16.03.2021

kavneet singh

(ARUN KUMAR TYAGI)
JUDGE

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