

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

CRM-M-20498-2021

Date of Decision : October 27, 2021

Amandeep Singh @ Sandeep Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM : HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present : Mr. Karnail S. Ahhi, Advocate
for the Petitioner.

Mr. B.S. Sewak, Addl. Advocate General, Punjab
for the Respondent/State.

SUDIP AHLUWALIA, J. (ORAL)

The instant Petition has been filed under Section 439 of the Code of Criminal Procedure seeking Regular Bail on behalf of the Petitioner in case FIR No.46, dated 20.03.2020, registered under Section 22-61-85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Dhariwal, District Gurdaspur.

2. The FIR against the Petitioner was drawn up after ASI Gurdev Singh of Anti-Gunda Staff Gurdaspur informed the MHC Police Station Dhariwal, stating that during search of bad elements in the area of Police Station Dhariwal, while patrolling, one person along with a black Kit bag was seen coming from Bus Stand side, who on seeing the Police Party started moving backward. On suspicion, he was apprehended and his name was enquired, which he stated was Amandeep Singh @ Aman (Petitioner).

There was suspicion that he was having some intoxicating material in the black Kit bag kept on his left shoulder. As per the information of said ASI, SI Parambir Singh of Police Station Dhariwal visited the spot and verified the case. The Investigating Officer called Sh. Kulwinder Kumar, PPS, Dy. Superintendent of Police, PBI, Gurdaspur to reach the spot. The said DSP visited the spot. As per consent of the Petitioner, the bag was checked and intoxicating tablets Clovidol-100 SR, Batch No. TVD-19670 Mfg. March 2020, Expiry date Feb.2023, kept in 18 white colored plastic envelopes, were recovered, and the same were found to be 10-10 strips of 50/50 tablets in each envelop and total 9000 intoxicating tablets. Hence, the FIR No.46 dated 20.03.2020 under Section 22/61/85 of the NDPS Act, Police Station Dhariwal was registered against the Petitioner.

3. The Petitioner has claimed that he was falsely implicated in the case and the alleged recovery was planted upon him. In fact, no recovery was actually effected from the spot and the entire paper-work by the Investigating Agency was actually done in the Police Station itself. It has been further submitted on behalf of the Petitioner that he has remained in detention for a long time now, after having been initially apprehended on 20.03.2020 after which he was first released on interim bail in pursuance of an order passed on 14.05.2020. But he was subsequently re-arrested and is being detained in the present case again since 01.12.2020.

4. Ld. Counsel for the Petitioner has emphatically argued that a bare perusal of the Consent and Non-consent Memo, Annexures P-3 and

P-4, the vernacular versions of which are also available on record at Pages 26 and 27, respectively, themselves go to indicate that the same were drawn up by the concerned Officers while sitting in the Police Station, and not at the spot since number of distinct and specific FIR in question i.e. 46 dated 23.03.2020 is seen to be noted at the top of both the above documents. Similarly, the Recovery Memo showing alleged recovery of the contraband from the Petitioner in presence of the Gazetted Officer namely Talwinder Kumar would again go to show the existence of the FIR No.46 dated same at the top.

5. In this backdrop, the submission made by Ld. Counsel for the Petitioner is that in view of the decision of the Supreme Court in **Ram Chander Sharma @ Pandit v. State (NCT Delhi) Criminal Appeal No. 1809 of 2009**, the existence of the FIR on the recovery memo when the FIR was not itself drawn up would point to the case against the petitioner being a fabricated one. Reliance has thereafter been placed upon an earlier decision of this Court in **Ajay Malik v. State of U.T. Chandigarh, 2009(3) RCR (Crl.)649 (P&H)** which was thereafter followed by the Division Bench in the decision of **Didar Singh @ Dara v. State of Punjab, 2010(3) RCR (Criminal) 337 (P&H) (DB)**. Various Benches of this Court have subsequently granted bail to such accused persons in view of these decisions wherever number of the FIR was seen to have been noted down in the documents purported prepared before registration of the FIR itself.

- [(i) CRM-M-38153-2019 titled Satish Kumar v. State of Punjab;**
- (ii) CRM-M-42370-2019 titled Tarsem Lal v. State of Punjab;**
- (iii) CRM-M-44921-2019 titled Gurdeep Singh v. State of Punjab;**
- (iv) CRM-M-32615-2018 titled Rinku Singh v. State of Punjab;**
- (v) CRM-M-61999-2018 titled Jatinder Vashisht v. State of Punjab;**
- (vi) CRM-M-34433-2019 titled Harvinder Singh @ Shammi v. State of Punjab.**
- (vii) CRM-M-36504-2020 titled Rajandeep Singh @ Ghughi v. State of Punjab]**

Similarly in :-

- (viii) CRM-20778-2018 in CRA-S-2212-SB-2016 titled Kashmir Singh @ Kokki v. State of Punjab; and**
- (ix) CRM-19587-2019 in CRA-S-2884-SB-2016 titled Charno v.**

State of Punjab, the benefit of suspension of sentence even in favour of the convicts was granted by this Court for the same reason, i.e. existence of the F.I.R. number on the Recovery Memo/Documents prepared before registration of the F.I.R.

6. Ld. Counsel for the State from his side has, however, relied upon a solitary decision of a Single Judge of this Court in **Ashok Kumar and another v. State of Punjab (CRM-M-9939-2011)** in which regular

bail was, however, denied since the Court found that there was a satisfactory explanation by the State by way of various affidavits and *ziminies* to the effect that in that particular case the space meant for mentioning the FIR number had been kept blank and was subsequently filled up after the Constable through whom the *ruqa* had been sent, had returned back to the spot where the Investigating Officer was present, who thereafter filled up the FIR number.

7. This Court has perused the disputed documents in question especially the vernaculars of the Consent and Non-consent Memo, Annexures P-3 and P-4, respectively, which clearly go to show existence of the FIR number and date at the top in a normal fashion and there is nothing to indicate that any space was kept blank at the time to preparation of such documents for subsequently adding the FIR number therein, which certainly goes to support the contention raised on behalf of the Petitioner that the recovery in question was planted upon him and the concerned Papers were drawn up subsequently after the FIR number had already been got assigned in the Police Station.

8. The Petitioner would therefore appear to be entitled to be released on bail in view of the ratio of the aforesaid judgments relied upon by his Ld. Counsel.

9. There is no record of his previous involvement in any other case under the NDPS Act and from the second Status Report filed on behalf of the State by way of Affidavit of the Deputy Superintendent of Police

dated 29.07.2021 it transpires that the Petitioner has been subsequently involved in another case under the NDPS Act being FIR No.173 dated 22.08.2020, which was not so, when the previous Status Report on record by way of Affidavit dated 22.06.2021 of the same Deputy Superintendent of Police was first filed in this case.

10. As such considering the long detention undergone by the Petitioner against whom in any case the Challan has already been filed after completion of investigation, and without commenting any further on the merits of the case as a whole, he is at this stage permitted to be released on bail to the satisfaction of the Ld. Trial Court/Duty Magistrate concerned.

11. Disposed off.

27th October, 2021
Dpr

(SUDIP AHLUWALIA)
JUDGE

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