

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

CRM-M-20804-2021 (O&M)

Date of Decision:- 29.10.2021

Gandhi Ram

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Vipin Yadav, Advocate for the petitioner.

Mr. Ajay Pal Singh Gill, DAG, Punjab,
assisted by ASI Balbir Singh

(proceedings conducted through video conferencing)

GURVINDER SINGH GILL, J.

1. The petitioner seeks grant of regular bail in a case registered vide FIR No. 3 dated 21.1.2021 under Sections 18/61/85 of the NDPS Act at Police Station Khuian Sarwar, District Fazilka
2. The FIR was lodged at the instance of ASI Sahib Singh wherein it is alleged that on 20.1.2021 when he alongwith other police officials was present at Bus Stand Patti Sadik for the purpose of checking, he received a secret information to the effect that Gandhi Ram (petitioner) indulges in sale of 'opium' and brings the same from Rajasthan and Haryana and that even at the given point of time, he was having 'opium' at his residence and in case a raid is conducted, he could be caught red-handed.

3. Pursuant to receipt of said information, the police swung into action and conducted a raid at the residence of Gandhi Ram where he was found present. It is the case of prosecution that upon conducting search, a kit bag which was lying on a wooden almirah in a sitting room was found. A white coloured polythene bag was found in the kit bag in which 'opium' had been kept. Currency notes worth ₹90,000/- were also recovered. The recovered 'opium' was found to weigh 2.750 kilograms.
4. The learned counsel for the petitioner has submitted that the petitioner has falsely been implicated in the instant case and is a well educated post-graduate who has been fighting the menace of drugs in the region and on account of which he has received several appreciation letters from the local authorities and administration. The learned counsel has drawn the attention of this Court to Appreciation letter dated 4.2.2020 (Annexure P-5) and also to letters issued by various Gram Panchayats (Annexure P-7) wherein it has been certified that the petitioner does not indulge into any illegal activities and that he is innocent. The learned counsel has also submitted that the petitioner cannot be attributed conscious possession of the recovered contraband inasmuch as apart from the petitioner his parents also reside in the same house from where the recovery is stated to have been effected. The learned counsel has further submitted that the petitioner is physically handicapped to the extent of 75 per cent as would be evident from the Handicapped Certificate (Annexure P-2).
5. Opposing the petition, the learned State counsel has submitted that since in the instant case, a secret information had been received against the petitioner, which has been found to be substantiated upon recovery of

‘opium’ from the house of the petitioner, no case for grant of bail is made out. The learned State counsel has further submitted that the documents being relied by the petitioner in the shape of certificates of some Gram Panchayats etc. are of no consequence in view of the fact that recovery of contraband was effected from the residence of the petitioner. The learned State counsel has submitted that the petitioner can safely be attributed conscious possession of contraband recovered from his house in his presence inasmuch as the secret information was only against the petitioner and not against his parents.

6. I have considered rival submissions addressed before this Court.
7. As per the case of prosecution, a specific information regarding possession of contraband by the petitioner had been received by the police. The said information has been substantiated from the factum of recovery of 2.750 kilograms of ‘opium’ from the residence of the petitioner. The certificates being pressed into service regarding the antecedents of the petitioner cannot outweigh the factum of recovery effected from the house of the petitioner and the said certificates cannot be relied upon at this stage to hold that the petitioner is innocent.
8. The recovered contraband i.e. 2.750 kilograms would fall in the category of ‘commercial’ quantity and as such, fetters imposed by Section 37 of the Act in the matter of grant of bail would be attracted. Hon’ble Apex Court in a recent judgement i.e. 2020(1) RCR(Criminal) 818 State of Kerala vs. Rajesh Kumar has reiterated the legal position as regards the limitation imposed by Section 37 of the 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 petitioner is not guilty of the offence in question. The petition is found to be sans merit and are hereby dismissed.

29.10.2021

kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned
Whether Reportable

Yes / No
Yes / No