

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

CRM-M No.21579 of 2021 (O&M)

Date of decision: 03.06.2021

Gurwinder Singh @ Goldy

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Vipul Jindal, Advocate for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN J. (Oral)

Prayer in this petition is for grant of regular bail to the petitioner under Section 439 of the Code of Criminal Procedure (in short 'Cr.P.C.') in FIR No.6 dated 06.05.2020, for offence punishable under Sections 21, 27, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') and 25 of the Arms Act (challan presented under Sections 21/25/29/27-A NDPS Act and 25 of the Arms Act) registered at Police Station State Special Operation Cell, District Amritsar.

Learned counsel for the petitioner, at the very outset, submits that FIR was registered under Sections 21, 27, 29 of NDPS Act and Section 25 of Arms Act, whereas challan has been presented under Sections 21, 25, 27-A of NDPS Act and Section 25 of Arms Act, therefore, the Registry may be directed to make necessary corrections in the head note and prayer clause of the petition.

Ordered accordingly.

Counsel for the petitioner has relied upon the order dated

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27.05.2021 passed in CRM-M No.20682 of 2021, vide which the co-accused of the petitioner has been released on regular bail. The operative part of the said order, reads as under:-

“Learned counsel for the petitioner has relied upon the order dated 26.03.2021 passed in CRM-M-13368-2021, vide which co-accused Gurpreet Singh @ Sajan has been granted the concession of regular bail. The operative part of the order reads as under: -

“...Learned counsel for the petitioner submits that new ground for filing this second petition is that now the supplementary challan stands presented. Learned counsel, with reference to the supplementary challan, has submitted that the allegations in the FIR are that co-accused Gurpreet Singh @ Billa and Kuldeep Singh @ Babbu were arrested with the allegation of their involvement in Indo-Pak border smuggling and some consignment of arms and heroin were recovered from them. It is further submitted that subsequent to their arrest, the police recorded a sequence of disclosure statements and in pursuance thereof, some recoveries were effected. It is also submitted that when co-accused Gurpreet Singh @ Gopi was arrested, as per his confession, the police party recovered one 9 mm pistol along with two magazines and two cartridges and another recovery of one pistol and ammunition was effected. Thereafter, the police recovered a mobile phone and Rs.23.00 lacs, which is stated to be drug money. Learned counsel for the petitioner has further submitted that on disclosure statement of co-accused Gurpreet Singh @ Gopi, the police took him to a house, where one person was found hiding and he was identified as Dilbagh Singh @ Bagga and from him, 1 kg 64 grams heroin was recovered and from another place, Rs.24,70,000/- of drug money along with a mobile phone was recovered. On personal search of Dilbagh Singh, Rs.200/- were recovered. On 12.05.2020, the Investigating Officer operated the account of Gurpreet Singh @ Gopi and approximately Rs.14.00 lacs were found deposited. Thereafter, on 12.05.2020, on the basis of disclosure statement of Gurpreet Singh @ Gopi, names of Jagtar Singh, Gurwinder Singh @ Goldy and petitioner Gurpreet Singh @ Sajan were surfaced. It is also submitted that the

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police, thereafter, on 18.05.2020, received a secret information that Gurwinder Singh @ Goldy is coming to meet his accomplice and he was nabbed and 30 bore pistol along with ammunition was recovered from him. Thereafter, he took the police party to the resident of his aunt, from where Rs.3.00 lacs of drug money and some ammunition were recovered. Further, on 23.05.2020, the police received an information that co-accused Jagtar Singh is coming to meet his accomplice and the police party apprehended him and recovered one mobile phone and a motorcycle. Thereafter, on 27.05.2020, the police again received an information that petitioner Gurpreet Singh @ Sajjan is coming to meet his accomplice and the police arrested him and recovered 30 bore pistol along seven cartridges. From personal search of the petitioner, Rs.1200/- were recovered. Learned counsel has argued that as per supplementary challan now presented, it would be apparent that the police, on different dates, on receiving secret information, was proceeding against all the accused and it will be a matter of trial whether such investigation in one FIR was legally justified, as in the subsequent recovery, no procedure under Section 50 of NDPS Act was followed, as the recovery was only of a weapon, for which a primary charge against the petitioner will be under Section 25 of Arms Act. It is further argued that the petitioner is in custody for the last 09 months and 23 days and co-accused Jagtar Singh, who had been arrested in a similar confession, has already been granted the concession of regular bail vide order dated 21.12.2020 passed in CRM-M-22913-2020...”

For the sake of brevity, facts are not reproduced again.

Learned counsel for the petitioner further submits that allegations against the petitioner are that after arrest of co-accused Gurpreet Singh @ Gopi on 06.05.2020, the police recorded his disclosure statement, in which he stated that he kept 01 kg of heroin along with Rs.24.00 lacs and recovery can be effected from a house, where he had concealed the same. It is also submitted that on 10.05.2020, when the police raided the house of Gurpreet Singh @ Gopi, which is in the name of his mother, the

CASE HEARD THROUGH VIDEO CONFERENCING

petitioner was found present there and recovery of narcotics and amount was effected. It is next submitted that there was no occasion for the petitioner to hide in the house of mother of coaccused, after coming to know that co-accused Gurpreet Singh @ Gopi has been arrested on 06.05.2020, if he had any connection with him and therefore, the petitioner has been falsely implicated in the case.

Learned counsel further submits that the petitioner has clean antecedents and is not involved in any other case and though the co-accused Gurpreet Singh @ Gopi is involved in some other cases under NDPS Act. It is also submitted that disclosure statement of the petitioner is nothing, but a copy of disclosure statement made by co-accused Gurpreet Singh @ Gopi, therefore, there is no evidence against the petitioner in this regard. It is further submitted that the petitioner is in custody for the last about 01 year and there are 40 prosecution witnesses, out of which none has been examined so far and it will take long time in conclusion of the trial, as due to COVID-19 situation in the country, trial is not proceeding.

Learned State counsel has, however, opposed the prayer on the ground that name of the petitioner surfaced in the disclosure statement of coaccused Gurpreet Singh @ Gopi, who was arrested on 06.05.2020 and has disclosed that he has concealed narcotics in his house and on 10.05.2020, when the police raided the house, the petitioner was found there.

On a Court query, learned State counsel has submitted that house belongs to mother of co-accused Gurpreet Singh @ Gopi and the petitioner is not owner of the house.

In reply, learned counsel for the petitioner has submitted that it will be a matter of trial whether the

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provisions of Section 42 of NDPS Act were complied with or not, as bare perusal of the FIR would reveal that the same was not complied with and has relied upon some judgments of the Hon'ble Supreme Court in support of his contentions. For the sake of brevity, same are not reproduced.

After hearing learned counsel for the parties, without commenting upon merits of the case and considering the fact that the petitioner is not involved in any other case; he was involved in the FIR on the basis of disclosure statement of co-accused; disclosure statement of the petitioner, after his arrest, is identical to the disclosure statement of main accused Gurpreet Singh @ Gopi and also in view of the fact that the petitioner has raised some substantive points regarding the flaws in the investigation, this Court deems it appropriate to grant regular bail to the petitioner.”

For the sake of brevity, the facts are not reproduced again.

Counsel for the petitioner has further submitted that in consequence of the disclosure statement of the co-accused, recorded by the police, the accused were arrested and some recoveries were effected. It is further submitted that the petitioner has been nominated as an accused on the basis of the disclosure statement of the co-accused Gurpreet Singh @ Gopi. It is also submitted that in pursuance to the disclosure statement when the petitioner was arrested no drugs were recovered from him and recovery of 30 bore pistol along with 10 cartridges was effected with Rs.3,03,500/-, the alleged drug money.

Counsel for the petitioner has further submitted that 02 other co-accused of the petitioner namely Jagtar Singh and Gurpreet Singh @ Sajan, have also been released on regular bail vide orders

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dated 21.12.2020 and dated 26.03.2021 passed in CRM-M No.22913 of 2020 and CRM-M No.13368 of 2021.

Lastly, counsel for the petitioner has submitted that in the absence of recovery of any drugs, it will be a debatable issue whether the disclosure made by the co-accused is admissible against him or not.

Counsel for the State on the other hand has opposed the prayer for bail on the ground that the petitioner was also nominated as an accused on the basis of the disclosure statement of Gurpreet Singh @ Gopi, who was arrested on 06.05.2020 and thereafter, on his disclosure statement, some narcotics were recovered from the co-accused Dilbagh Singh @ Baga.

Without commenting anything on merits of the case, considering the fact that the petitioner is in custody for the last about 01 year; the co-accused of the petitioner are already released on bail; the custodial interrogation of the petitioner is not required and the conclusion of the trial will take some time due to COVID-19 situation, this petition is allowed and the petitioner is directed to be released on bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate.

However, it will be open for the prosecution to apply for cancellation of bail of the petitioner, in case he is found involved in any other case or misusing the concession of bail, in any manner.

03.06.2021

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Whether speaking/reasoned:
Whether reportable:

**(ARVIND SINGH SANGWAN)
JUDGE**

Yes/No
Yes/No