

In virtual Court

CRM-M-23889-2021

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-23889-2021 (O&M)
Date of decision: 05.07.2021

Ankush Kapoor

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Kanwaljit Singh, Sr. Advocate with
Mr. Ajaivir Singh, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN, J. (ORAL)

This is 2nd petition for grant of regular bail in FIR No.20 dated 29.01.2020 under Sections 21, 25, 27-A, 29/61/85 of NDPS Act and Section 30/54/59 of Arms Act, registered at Police Station Special Task Force, District STF Wing, SAS Nagar, Mohali; earlier one was dismissed as withdrawn on 25.02.2021, as it was stated by learned State counsel that investigation is still going on.

Learned senior counsel for the petitioner submits that new ground

for filing this second petition is that the investigation is complete; the trial is not proceeding and the petitioner, as on today, is in custody of more than 01 year and 04 months.

Brief facts of the case are that the FIR was registered on the basis of a ruqa/written information sent by Randhir Singh, Inspector, STF Border Range, Amritsar dated 29.01.2020, with the allegations that he along with other police officials, including DSP, STF Border Range were present in the office, when a special information was received that one person, whose height is 5' 9" colour whitish, having beard and hairs, who described his name as Happy, resident of Amritsar, is roaming in a white coloured Creta car bearing registration No.PB-02-DM-9518. This person is having intoxicant material and illegal weapon in his car to supply heroin in Punjab and other States. This man is having links with big smugglers and if he is nabbed, then a big network of supply of heroin can be unearthed. On registration of the FIR, aforesaid person Sukhbir Singh @ Happy was arrested on a special naka, while driving a Brezza car bearing registration No.PB-02 (DJ)-0279. On his search, 01 revolver of .32 bore with 04 live cartridges along with 06 boxes of heroin weighing 5 kg 690 grams were recovered.

Thereafter, during the interrogation, said Sukhbir Singh @ Happy suffered a disclosure statement that the car belongs to petitioner Ankush Kapoor, who has handed over the same for further delivery to a special person by code name Baba Jani. It was further stated that the petitioner is having a

shop by the name R.C. Creations at Crystal Chowk, Amritsar and recovery of heroin can be effected from him. Later on, the petitioner was arrested on 29.01.2020 from his shop and police recorded his disclosure statement that he has kept three transparent bags of heroin along with a cane containing Amonia solution and one plastic bag having 500 gms of codiene Charcol Powder and one plastic bottle of 500 ml of Hydrochlorode Acid and later on got the same recovered from a wooden almirah from his house. Upon weighing, 3 kg 250 gm heroin was recovered.

Thereafter, the police, on 07.02.2020, again recorded the second disclosure statement of the petitioner and recovered a mobile phone and found that some Whatsapp applications are downloaded. Again third disclosure statement was recorded on 11.02.2020 and two more mobile phones along with SIM cards were recovered, which were allegedly used for sending information by using codes for supplying and receiving heroin.

During the course of investigation, the police arrested another accused Kuldeep Singh and checked the bank record of Sukhbir Singh @ Happy and Kuldeep Singh and found that some amount has been deposited in his account.

Learned senior counsel for the petitioner has argued that in all, 10 accused have been nominated in this case along with main accused Sukhbir Singh @ Happy, who was arrested at the spot and other persons, who were nominated on the basis of successive disclosure statements of other accused

persons. It is further argued that the petitioner is a young person aged about 27 years and had no previous history of involvement in any such activity prior to the date of registration of the FIR. It is also submitted that the petitioner is an Income Tax-Payer and is doing his family business and he had recently joined a Gym, where he met some persons and he has been trapped in the present case, without there being any *mens rea* on his part and his involvement in the present case is on the basis of disclosure statement of co-accused Sukhbir Singh @ Happy and except for the own successive disclosure statement, wherein some recovery of narcotics and mobile phone was effected, there is no evidence to connect him with co-accused, who were part of an active gang, which was organizing the drug business.

It is further submitted that there are no call details collected during the investigation, to show that the petitioner has any meeting of mind with the aforesaid persons. He is neither owner of the car, which was recovered from co-accused Sukhbir Singh @ Happy nor he is owner of the house, from where the narcotics were recovered on the basis of disclosure statement dated 03.02.2020. It is also submitted that even subsequently, on the very next day i.e. 31.01.2020, another FIR No.23 dated 31.01.2020 was registered by STF Border Range, Amritsar against the petitioner, so as to involve him in another case. It is next submitted that as on today, the petitioner is in custody for the last 01 year, 04 months and 17 days and as many as 38 prosecution witnesses have been cited, however, till date, none has been examined and the trial is delayed due to

COVID-19 situation.

Learned senior counsel for the petitioner has further argued that even in the entire family of the petitioner, there is no such history of involvement in any case under NDPS Act, as he belongs to a business family and the trial Court has wrongly declined bail by observing that no opinion can be formed in terms of Section 37 of NDPS Act that the petitioner is not likely to commit offence, while on bail.

On request of learned State counsel, case file of first petition i.e. CRM-M-24847-2020 filed by the petitioner, was requisitioned, as a status report was filed by DSP, STF Border Range, Amritsar in the said case.

Learned State counsel submits that during the investigation, when the recovery of narcotic substance and mobile phone was effected, it was found that there are certain Whatsapp applications, which were used for sending messages in codes for receiving consignments. During the investigation, it has come that 10 persons are named in the FIR, out of which mastermind of the gang is Simranjit Singh Sandhu who is presently in police custody in Italy and one person namely Armaan Basarmal, resident of Afganistan was involved to procure the consignment and identity of a person named as Bhai Jaan is not ascertained. It is further submitted that co-accused Tanvir Singh Bedi as well as close associates of the kingpin Simranjit Singh Sandhu and other accused Sukhbir Singh, Mantej Singh, Tammana Gupta are actively involved in the smuggling of heroin by taking rented houses and the allegations against the

petitioner are that he has helped them in obtaining the rented house. It is further submitted that challan was prepared on 11.06.2020 and submitted before the Special Judge, Amritsar on 19.07.2020 against the petitioner and other accused excluding Simranjit Singh Sandhu and Tanvir Singh Bedi, who are residing abroad. It is thus submitted that considering the fact that commercial quantity of narcotic substance was recovered from the petitioner, after his name surfaced in the disclosure statement, present petition may kindly be dismissed.

In reply, learned senior counsel for the petitioner has relied upon a judgment of the Hon'ble Supreme Court in **Prabhakar Tewari Vs. State of U.P. & Anr., 2020 (2) RCR (Crl.) 831**, wherein it is observed that where several cases are pending against accused, the same cannot be a factor for refusal of prayer for bail, as discretion is to be exercised by the Court in granting bail, considering the relevant material. Learned senior counsel has also relied upon a judgment passed by Coordinate Bench of this Court in **Amritpal Singh Vs. State of Punjab** in CRM-M-13752-2020 on 14.07.2020, wherein the bail was granted to a person booked under NDPS Act, observing that sanctity of custodial disclosure statement as well as the prosecution version is a matter of trial.

Learned senior counsel has further relied upon a judgment in **Sujit Tiwari Vs. State of Gujarat and anr., 2020 AIR (SC) 667**, wherein the Hon'ble Supreme Court, considering the antecedents of an accused and also in view of long custody, granted the concession of bail, noticing the fact that there

is a possibility that he was unaware of the illegal activities of co-accused.

After hearing learned counsel for the parties, I find merit in the present petition, for the following reasons: -

- (a) The petitioner was not named in the secret information, wherein only description of co-accused Sukhbir Singh @ Happy was mentioned along with Creta car bearing registration No.PB-02-DM-9518, whereas he was found driving Brezza car bearing registration No.PB-02-DJ-0279.
- (b) The petitioner was nominated in the FIR, on the basis of disclosure statement of aforesaid co-accused Sukhbir Singh @ Happy, from whom the commercial quantity of heroin was recovered.
- (c) The petitioner is not involved in any other case prior to registration of present FIR and subsequent FIR registered on the very next day i.e. 31.01.2020.
- (d) The defence set up by the petitioner that he is running his family business of cloth merchant and is Income Tax Payer as well as that he has recently joined a gym, where he came in contact with some person and he has been trapped in this case without there being any *mens rea* on his part, is yet to be ascertained during the course of trial.
- (e) As per affidavit of DSP, STF filed in CRM-M-24847-2020 (first bail application of the petitioner), giving the status report, neither it

is stated that the petitioner is owner of the car recovered from co-accused Sukbir Singh @ Happy, as in the secret information, there was reference of Hyundai Creta car, whereas as per status report, Brezza car was recovered; registration numbers of both these cars were different nor the affidavit states about ownership of the house, from where recovery was effected post disclosure by the petitioner.

- (f) The police recorded three successive disclosure statements of the petitioner, on the basis of which, the alleged narcotics as well as mobile phones were recovered, however, the affidavit is again silent about any call details between the petitioner and co-accused, which may show that there was no meeting of mind among them to run an organized racket of selling of narcotics.
- (g) It is admitted case of the prosecution that the petitioner is in custody since 30.01.2020; a period of 01 year, 04 months and 17 days has passed despite the fact that challan was presented on 09.07.2020 and despite a lapse of one year, prosecution evidence has not started and as many as 38 prosecution witnesses have been sited and it will take long time in conclusion of the trial.
- (h) The petitioner will hand over his passport to the police authorities and will not leave the country without prior permission of the Court.

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In view of the above, this petition is allowed and the petitioner is directed to be released on regular bail subject to furnishing his bail/surety bonds to the satisfaction of the trial Court/Illaqa Magistrate/Duty Magistrate, concerned.

However, it is made clear that at any subsequent stage, if the petitioner is found involved in any case under NDPS Act, it will be open for the prosecution to apply for cancellation of his bail.

**[ARVIND SINGH SANGWAN]
JUDGE**

05.07.2021
vishnu

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No