

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

**CRM-M No.19282 of 2019(O&M)
Date of Decision-21.09.2021**

Sukhchain Singh @ Sukh ... Petitioner
Versus

State of Punjab ... Respondent

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

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

Mr. Amar Ashok Pathak, Addl., A.G., Punjab.

RAJ MOHAN SINGH, J.

[1]. Petitioner seeks grant of regular bail under Section 439 Cr.P.C in case bearing FIR No.216 dated 30.08.2018 registered under Sections 21, 29 of the NDPS Act and Sections 25, 27 of the Arms Act at Police Station Gate Hakima, District Amritsar City.

[2]. As per prosecution case, when a motorcycle was seen coming with high speed, the police signaled the motorcyclist to stop and the motorcyclist increased the speed. Because of high speed, the motorcyclist could not turn the motorcycle at sharp corner and the motorcycle got slipped to a long distance along with the rider. Motorcyclist got received the injuries. The motorcyclist started scuffling with the police party and during the scuffle, .32 bore fully loaded pistol fell down from his waist. Police official got suspicion and ASI with the help of his companions, apprehended the person.

On being asked, he disclosed his name as Sarabjot Singh @ Jota. He was asked to give reason for his escape, but he could not give satisfactory answer. He also could not give any satisfactory answer about the possession of the pistol, nor was having any arms licence. Police official on the basis of suspicion searched the person and motorcycle one by one. From the seat of motorcycle, RC and other papers were recovered. On checking, one polythene bag was also recovered behind the seat. The material got sniffed and the same was found to be heroin. On weighing, the same was found to be 300 grams. The pistol and heroin were taken into police possession after due proceedings. With this background, FIR was registered.

[3]. Learned counsel for the petitioner submitted the following arguments:-

(i) The petitioner was not present at the spot, nor he fled away in any manner. Sarabjot Singh @ Jota was remanded in police custody and during his interrogation, he did not disclose any incriminating material against the petitioner to connect the petitioner with the alleged recovery of intoxicant material, but police in order to implicate him, concocted a false story that on 05.09.2018, Inspector Vavinder Kumar received a secret information that Sarabjot Singh @ Jota used to receive intoxicant substance from the petitioner and the petitioner could be apprehended along with intoxicant

substance as he was coming towards village. On the basis of said alleged secret information, the petitioner was apprehended by the police, but no intoxicant substance was recovered from the petitioner. The police further made a concoction that mobile phone of the petitioner was searched, wherein a voice message was found, in which, he was stating that two packets of heroin have been thrown at the border, which had to be lifted by the petitioner. On the basis of alleged voice message, a police party headed by Inspector Vavinder Kumar starting making search of the fields situated in the village of Rajoke at Indo-Pak Border. It has been alleged that 1 kg 400 grams of heroin and one Pakistani sim were got recovered, on the basis of which, the petitioner was apprehended and made an accused in the present case.

(ii). Sarabjot Singh @ Jota has been granted regular bail by the High Court vide order dated 12.10.2020 passed in CRM-M No.22133 of 2019. In the aforesaid case, it has been observed by the High Court that the objection of the learned State counsel was duly met with regard to involvement of the accused in one more NDPS Act when learned counsel for the said accused Sarabjot Singh @ Jota offered to deposit bank guarantee of the property worth Rs.10 lacs with the trial Court/Duty Magistrate in addition to the bail bonds in order to show his *bona fide* for not misusing the concession of bail. It has also been undertaken not to create any encumbrance

over the said property during trial. The Court also observed that in the undertaking to be furnished by the accused, it will be incorporated that in case, the accused is found involved in any other case and is held guilty from the date of granting bail, the property shall be confiscated and the amount shall be liable to be forfeited and be deposited in the Government Treasury. The same shall however be without prejudice to the defence of the accused during trial.

(iii). In the challan, the police has given different version than the one mentioned in the FIR. According to the challan, on 05.09.2018, secret informer informed Inspector Vavinder Kumar, Incharge CIA Staff, Amritsar that accused Sarabjot Singh @ Jota had been bringing the heroin from Sukhchain Singh @ Sukh i.e. petitioner. Petitioner along with some friend is coming to adda Algo to crack a deal of heroin. If raid is conducted, then, he can be apprehended with huge quantity of heroin. The further investigation of the case was conducted by Inspector Vavinder Kumar. As per the place disclosed by the secret informer, Inspector Vavinder Kumar along with police party laid a trap at adda Algo kothi. As per physical appearance told by the informer, one person was seeing coming, the police party apprehended him and on being asked, he disclosed his name as Sukhchain Singh @ Sukh. Inspector Vavinder Kumar showed his suspicion to the petitioner with regard to the presence of intoxicant substance

with him and he wanted to take a search of his body. Offer was given that he has a right to be searched before the Gazetted Officer or Magistrate. Petitioner allegedly reposed faith in the police officer and thereafter, Vavinder Kumar completed the memo of consent. Mobile of the petitioner was checked and thereafter, voice message was allegedly found. Petitioner was asked about the voice message and he replied that the voice message was of Irfan belonging to Pakistan. In the voice message, it was being disclosed that earlier from where the material was picked up, the earlier place to the same from there you can pick up the material. CD of the voice message was prepared. On interrogation, confession of the petitioner was recorded that Irfan had thrown two packets of heroin and one Pakistani sim at village Rajoke border near the rice fields. Inspector Vavinder Kumar along with police officials and the petitioner reached the office of Commandant 87 Btn. BSF Amarkot and took him along with one search party. The search party was consisting of other officers also. Search was conducted in the rice fields as told by the petitioner. During search, 2 packets of heroin wrapped in green colour tape were recovered. One Pakistani sim was also recovered. The contraband and sim were taken into possession by BSF search party and on weighing, 1 kg 400 grams of heroin was found. The parcel was affixed with seal of 87 BSF. Total seven seals and on cloth parcel, round seal

of office of Commandant, 87 Btn. BSF were affixed. On Pakistani sim, the seal of 87 BSF was also affixed. Total three seals and on the cloth parcel, round seal of office of Commandant 87 Btn. BSF were affixed.

(iv). Section 29 of the NDPS Act was added vide DDR No.13. On 06.09.2018, Inspector Sukhjinder Singh handed over the accused along with parcel of 1 kg 400 grams of heroin duly affixed with seal of 'VK', 'JS' along with sample seals for production before the Court. Inspector Vavinder Kumar produced the petitioner along with parcel of 1 kg 400 grams of heroin affixed with seal of 'VK', 'JS' along with sample seals before the Court.

(v). Recovery cum seizure memo dated 06.09.2018 would show that 19 persons took 35 minutes to locate the alleged contraband. The police party reached at 10:45 PM at the spot and recovery was effected only at 11:20 PM. The aforesaid fact would show that place of contraband was not exactly known to the petitioner, who was carried by the police party. Further search of the area was carried out from 11:50 PM to 2:10 AM. The said search and recovery were not in pursuance of disclosure statement allegedly made by the petitioner. The sample received in the FSL was a parcel sealed with two seals of 'ARS' and 'VK' alleged to have

contained heroin. No seal of the Commandant 87 Btn. BSF was found.

[vi]. Petitioner is in custody for the last more than 2 years and 11 months. In case of reposition of faith by the petitioner, the police was under legal obligation to take the petitioner to nearest Gazetted Officer or Magistrate in view of ratio laid down in **State of Rajasthan Vs. Parmanand and another, 2014(2) RCR (Criminal) 40, Vijaysingh Chuandubha Jadeja Vs. State of Gujarat, 2010(4) RCR (Criminal) 911** and **Gurjant Singh @ Janta Vs. State of Punjab, 2013(4) RCR (Criminal) 874** so as to impart authenticity, trustworthiness and creditworthiness in the prosecution story. The contraband was not recovered from the conscious possession of the petitioner. Since co-accused in the FIR has been granted regular bail subject to the conditions and in view of custody of the petitioner for about 2 years and 11 months, the petitioner is entitled for regular bail. Petitioner was not nominated on the basis of disclosure statement of co-accused Sarabjot Singh @ Jota, rather the said accused did not disclose anything incriminatory against the petitioner. Petitioner was arrested on the basis of secret information and the compliance of Sections 42 and 50 of the NDPS Act, would remain debatable. The land from where the recovery was effected, does not belong to the petitioner.

[4]. Learned State counsel, however, opposed the bail on the ground that the recovery is of commercial nature. Petitioner is member of the international gang operating in narcotics. 1 kg 400 grams of heroin and one Pakistani sim have been recovered on the basis of disclosure statement of the petitioner and the material witnesses are yet to be examined.

[5]. Taking into consideration, the entirety of facts and circumstances of the case on *prima facie* note, custody of the petitioner, stage of the trial and the situation arising out of pandemic COVID-19, at this stage, I deem it appropriate to enlarge the petitioner on regular bail without meaning anything on merits of the case.

[6]. In view of above, the present petition is allowed. Petitioner is ordered to be released on regular bail subject to his furnishing adequate bail bonds/surety bonds to the satisfaction of the trial Court/concerned Duty Magistrate.

[7]. Nothing expressed hereinabove, would be construed to be an opinion on merits of the case.

(RAJ MOHAN SINGH)
JUDGE

21.09.2021

Prince

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No