IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M No.25583 of 2021(O&M)
Date of Decision: 16.07.2021

Ajay Kumar Jindal

.....Petitioner

Vs

State of Punjab

.....Respondent

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

Present: Mr. Jasjit Singh Bedi, Sr. Advocate with
Mr. Sonepreet Singh Brar, Advocate
for the petitioner.

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

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RAJ MOHAN SINGH, J.

[1]. The case has been taken up for hearing through video conferencing.

[2]. Petitioner seeks grant of regular bail under Section 439 Cr.P.C in case bearing FIR No.237 dated 25.12.2019 registered under Section 22 of the NDPS Act at Police Station City Kotkapura, District Faridkot.

[3]. As per prosecution case, the police party was on patrolling. One motorcyclist was seen coming and on seeing the police, he tried to turn back. On suspicion, he was overpowered and his name was found to be Dharminder Singh

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2021.07.19 12:00
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@ Bhinda. One white colour envelope was hanging on the right handle of the motorcycle and suspicion arose in respect of intoxicant substance contained in that envelope. On this information, the police party reached at the spot. Thereafter, offer was given to the accused whether he wanted to be searched before the Magistrate or Gazetted officer. Accused Dharminder Singh @ Bhinda reposed faith in the Investigating Officer. On this, Investigating Officer proceeded to effect recovery.

[4]. According to the prosecution case, 500 tablets mark NRX Tramadol Hydrochloride tablets 100 mgs, Clovidol-100 SR were recovered. On conducting personal search of the accused, two currency notes in the denomination of Rs.500/- and one mobile phone were recovered. Thereafter, the Investigating Officer searched the motorcycle and recovered RC and affidavit etc. RC of the motorcycle was found in the name of Sukhdeep Singh. In the affidavit, name of the purchaser was found to be Dharminder Singh and seller's name was found to be Sukhdeep Singh. The aforesaid FIR was registered at the instance of Raj Kumar, Sub Inspector, CIA Staff, Jaitu against Dharminder Singh @ Bhinda, who was allegedly arrested by CIA staff along with intoxicant tablets at 9:00 PM in the evening.

[5]. Thereafter, on disclosure statement of Dharminder

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Singh @ Bhinda, the petitioner was nominated as an accused vide rapat No.33 dated 26.12.20219 at 8:18 PM in Police Station City Kotkapura. ASI Raj Kumar arrested Dharminder Singh @ Bhinda while he was present at factory road Kotkapura at about 7:39 PM on 26.12.2019 and thereafter, SI Kulbir Chand, CIA Staff, Jaitu along with other officials reached the factory road Kotkapura at 8:15 PM and had apprised the accused in respect of his right and on reposition of faith, the Investigating Officer/SI Kulbir Chand proceeded to recover 500 tablets of Tramadol Hydrochloride from Dharminder Singh @ Bhinda. The accused was produced before the Magistrate on the next day and the police took remand of Dharminder Singh @ Bhinda.

[6]. On 26.12.2019, rapat No.33 dated 26.12.2019 was entered at 8:18 PM by SI Kuldeep Chand, Incharge, CIA Staff in Police Station City Kotkapura in respect of disclosure statement of Dharminder Singh @ Bhinda to the effect that he bought recovered tablets from the petitioner, who is proprietor of Shakti Medical Hall, Kotkapura. On that premise, the petitioner was nominated as an accused in the present case.

[7]. Petitioner was arrested after rapat No.33 dated 26.12.2019 and was produced before the Incharge Police Station City Kotkapura and rapat No.35 dated 26.12.2019 was

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entered at about 10 PM by SI Kulbir Chand in Police Station City Kotkapura. Petitioner was confined in the lockup of the police station. No recovery was effected from the petitioner at the time of his arrest.

[8]. Learned Senior Counsel for the petitioner submitted that in fact the petitioner was picked up by CIA Staff at about 6:15 PM from Gali No.5, Aman Nagar, Kotkapura along with his Breeza car and was straightaway taken to Police Station CIA Staff, Jaitu. In fact, the petitioner was picked up prior in time and was shown to be arrested at 9:00 PM on 26.12.2019. Learned counsel for the petitioner has alleged violation of proviso to Section 42(1) of the NDPS Act as his arrest was after the sunset. In the context of arrest of the petitioner by CIA Staff, Jaitu and his production before the Court on 27.12.2019 at 12:00 AM, the petitioner filed an application under Section 167 read with Section 57 Cr.P.C for his release on bail as he was not produced within 24 hours and therefore, his remand was unlawful. The said application was disposed of by the Judicial Magistrate First Class, Faridkot on 28.12.2019 by observing that the accused has not been produced within 24 hours after the police remand, therefore, intimation be sent to SSP, Faridkot for taking appropriate action against arraying officials in accordance with law. The Court refused to grant bail on that premise. In the

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context of his illegal detention by CIA Staff, Jaitu, the petitioner moved an application for preserving the CCTV footages of CIA Staff and Police Station City Kotkapura for the period/timing 6:00 PM dated 26.12.2019 to 28.12.2019 so as to use the same in defence. On this application, the Court proceeded to record that SI Kulbir Chand, Incharge CIA Staff filed his affidavit that no CCTV cameras are installed in CIA Staff, Jaitu. SHO Police Station City Kotkapura also filed his affidavit that four CCTV cameras are installed at Police Station City Kotkapura, out of which, two CCTV cameras are working at lockup and remaining at inner gate of Police Station i.e. outside and inner side of the building.

[9]. Additional Sessions Judge, Faridkot vide order dated 15.01.2020 directed SSP, Faridkot to preserve recording of CCTV camera of Police Station City Kotkapura for the period/timing 6:00 PM dated 26.12.2019 to 28.12.2019 and produced the same in the Court as and when required in the case.

[10]. After passing the aforesaid order, SHO, Police Station, Kotkapura submitted his report dated 07.03.2021 that for compliance of order of the Court in toto, letter No.167/Litigation dated 22.01.2020 was received in the Police Station City Kotkapura, which was entered by MHC in the register and was

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2021.07.19 12:00
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produced before the then SHO. Inspector Jasbir Singh 329/FR after perusing the said letter dated 22.01.2020, did not mark the same to any official for compliance and due to non-compliance of order dated 15.01.2020 passed by the Additional Sessions Judge, Faridkot in time, CCTV footages could not be preserved. It was recommended to seek explanation of Inspector Jasbir Singh.

[11]. Learned Senior Counsel further submitted that in respect of illegal detention of the petitioner, the Police has adopted a very clever-some method in violation of the Court order(s) even by destroying the CCTV footages of the Police Station City Kotkapura. Petitioner has been nominated on the basis of disclosure statement of Dharminder Singh @ Bhinda and therefore, disclosure statement of the petitioner was also recorded on 28.12.2019, wherein the police has allegedly mentioned that the petitioner had hidden the intoxicant tablets in one polythene bag in Ganda Nala situated near Devi Wala road Kotkapura City and also got recovered the contraband in polythene bag containing boxes of intoxicant tablets. The huge quantity of contraband is alleged to have been recovered from the site of Ganda Nala on the alleged disclosure statement of the petitioner. Rapat No.25 dated 28.12.2019 was recorded and thereafter one more rapat No.27 dated 28.1.22019 was entered

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at 3:09 PM, alleging that the petitioner was taken out from lockup of Police Station City Kotkapura and sent to the Court.

[12]. The contention of the petitioner is that from 26.12.2019 at 6:15 PM till afternoon of 28.12.2019 at 1:00 PM, the petitioner was never taken to Police Station City Kotkapura on any of the occasions. As per prosecution story, the petitioner was repeatedly taken to Police Station City Kotkapura and proceedings were conducted by entering rapats by SI Kulbir Chand, CIA staff as well as by SI Jaskaran Singh, in the Police Station City Kotkapura.

[13]. Precisely, in that context, CCTV footages of CIA Staff, Jaitu and Police Station City Kotkapura were sought to be preserved.

[14]. Learned Senior Counsel further submitted that as per decision of the Hon'ble High Court in ***CRWP No.428 of 2017*** titled ***Mohit Nayyar Vs. State of Punjab and others*** decided on 10.01.2019, CCTV cameras were required to be installed in every police station, but the police has taken a stand that there was no CCTV camera installed in CIA Staff, Jaitu and CCTV footages of Police Station City Kotkpaura have been destroyed, owing to the inaction/omission on behalf of the Inspector Jasbir Singh 329/FR. Learned Senior Counsel has also alleged some incriminating facts based on some documents.

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[15]. Evidently, the petitioner has been nominated on the basis of disclosure statement of Dharminder Singh @ Bhinda, Disclosure statement of the petitioner as alleged led to recovery of contraband from Ganda Nala.

[16]. In the light of non-preservation of CCTV footages, the complicity of the petitioner would remain debatable i.e. whether recovery of contraband was made in pursuance of disclosure statement in Police Station City Kotkapura or not. The alleged recovery is dependent upon validity of disclosure made by petitioner in Police Station Kotkapura. The consistent stand of the petitioner is that he remained only in CIA Staff Jaito and was never taken to Police Station City Kotkapura, where different DDR's were recorded. Inspector Jasbir Singh has acted in total defiance of the order dated 15.01.2020 passed by the Additional Sessions Judge in not preserving the CCTV footages. Challan was submitted in the absence of the petitioner. In a direction matter filed by the petitioner i.e. CRM-M No.10772 of 2020, notice of motion was issued. That fact, prompted the prosecution to allege that the petitioner is putting pressure on the Investigating Agency by giving complaints to senior officers and therefore, a request was made to the Court to accept challan in the absence of the petitioner.

[17]. Petitioner was nominated on the basis of disclosure

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statement of accused Dharminder Singh @ Bhinda, who allegedly reposed faith in the Investigating Officer at the time of conducting search.

[18]. Learned Senior Counsel further submitted that even in case of chance recovery, if offer is given to the suspect in terms of Section 50 of the NDPS Act, then it becomes mandatory for the Investigating Officer to comply with the requirements of Section 50 of the NDPS Act. When the Investigating Officer on noticing the contraband, felt the need of invoking Section 50 of the NDPS Act and gave offer to the accused, then it becomes mandatory for the Investigating Officer to comply with the requirement of Section 50 of the NDPS Act. Learned Senior Counsel placed reliance upon ***Gurjant Singh @ Janta Vs. State of Punjab, 2013(4) RCR (Criminal) 874.*** The alleged faith reposed by accused Dharminder Singh @ Bhinda in the Investigating Officer is also hit by the ratio laid down in ***State of Rajasthan Vs. Parmanand and another, 2014(2) RCR (Criminal) 40*** and ***Vijaysinh Chandubha Jadeja Vs. State of Gujarat, 2010(4) RCR (Criminal) 911***. Even in case of reposition of faith in the Investigating Officer, it was imperative on the part of the Investigating Officer to take the suspect to nearest Magistrate and to comply with the requirement of Section 50 of the NDPS Act in order to impart authenticity,

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2021.07.19 12:00
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transparency and creditworthiness to the prosecution case.

[19]. Learned Senior Counsel also referred to ***Narcotics Central Bureau Vs. Sukh Dev Raj Sodhi, 2011(3) RCR (Criminal) 370*** to contend that view expressed in ***Vijaysinh Chandubha Jadeja's case (supra)*** was followed and it was held that the requirement of Section 50 of the NDPS Act is not a mere formality and the same would not be complied with by merely informing the accused of his option to be searched before the Gazetted Officer or Magistrate. The requirement continues even after that and it is clear that the accused is actually brought before the Gazetted Officer or Magistrate in order to impart authenticity, transparency and creditworthiness to the entire prosecution case. An endeavour should be made by the prosecuting agency to produce the suspect before the nearest Magistrate, even if, the consent is given by the accused by reposing faith in the Investigating Officer.

[20]. Learned State counsel, however, opposed the bail on the ground that the recovery effected from the accused is commercial in nature and recovery is hit by Section 27 of the NDPS Act as the same was effected in pursuance of disclosure statement of the petitioner.

[21]. Having considered the submissions made by learned

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2021.07.19 12:00
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counsel for the parties, I refrain myself from commenting upon the material produced on record by the petitioner, lest it may prejudice the case of the parties during trial. Co-accused Dharminder Singh @ Bhinda was apprehended on the basis of suspicion. The Investigating Officer in his wisdom felt the necessity of invoking Section 50 of the NDPS Act on seeing the contraband. Thereafter, the Investigating Officer was duty bound to comply with the requirement of Section 50 of NDPS Act. The complicity of the petitioner based on disclosure of co-accused whose search was effected by the Investigating Officer on reposing faith, would be debatable as discussed in the earlier part of the order. The complicity of the petitioner on the basis of non-preservation of CCTV footages of CIA Staff Jaito and Police Station City Kotkapura would also remain debatable as the petitioner has specifically pleaded that he was never brought to Police Station City Kotkapura at the time of recording different rapats. He had not made any disclosure statement in Police Station City Kotkapura and therefore, there was no question of effecting recoveries in pursuance of his disclosure statement.

[22]. For the reasons recorded hereinabove and without meaning anything on merits of the case, at this stage, I deem it appropriate to grant regular bail to the petitioner as the complicity of the petitioner would be debatable on the basis of

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prima facie consideration of material on record. However, the involvement of the petitioner would be tested by the Court on the basis of evidence to be led by the parties.

[23]. In view of above, 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.

[24]. Nothing expressed hereinabove would be construed to be an expression of any opinion on merits of the case.

(RAJ MOHAN SINGH)
JUDGE

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Whether speaking/reasoned Yes/No

Whether reportable Yes/No

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