

**In the High Court for the States of Punjab and Haryana
At Chandigarh**

CRM-M-24914-2021 (O&M)

(1) Sahil Kumar @ Gora ... Petitioner

Versus

State of Punjab ... Respondent

(2) **CRM-M-31348-2021 (O&M)**

Ajay Kumar Jindal ... Petitioner

Versus

State of Punjab ... Respondent

Date of Decision:- 11.10.2021

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Amaninder Preet, Advocate for the petitioner
in CRM-M-24914-2021.

Mr. J.S.Bedi, Senior Advocate with
Mr. Sonpreet Singh Brar, Advocate for the petitioner
in CRM-M-31348-2021.

Mr. Ajay Pal Singh Gill, DAG, Punjab,
assisted by Inspector Mukhtiar Singh.

(proceedings conducted through video conferencing)

GURVINDER SINGH GILL, J.

1. This order shall dispose off the above mentioned two petitions filed on behalf of Saurav and Ajay Kumar Jindal seeking grant of regular bail as they arise out of the same FIR i.e. FIR No. 244 dated 9.11.2020 under Sections 22/29 of the NDPS Act, 1985 registered at Police Station City Kotkapura, District Faridkot.

2. The FIR was lodged at the instance of SI Kulbir Chand wherein it is alleged that on 9.11.2020, when he was present in the office of CIA Staff, Jaito, then at about 8:15 p.m., ASI Sikander Singh informed him telephonically that while he alongwith other police officials was patrolling in the area of Kotkapura, they had come across a young boy going on a scooty, who upon noticing the police party tried to turn back but was apprehended by the police on the basis of suspicion that he was carrying some intoxicant. Upon receipt of said information, Sub-Inspector Kulbir Chand reached at the spot at about 8:30 p.m. Upon enquiry, the apprehended young boy disclosed his name as Sahil Kumar. S.I. Kulbir Chand identified himself and extended an offer in terms of Section 50 of the NDPS Act (hereinafter referred to as '*the Act*') regarding option of being searched in the presence of some Magistrate or a gazetted officer. Sahil Kumar opted to be searched in the presence of some gazetted officer, upon which DSP Jaspal Singh was requested to come at the spot, who reached at about 9:35 p.m. DSP Jaspal Singh also extended an offer in terms of Section 50 of the Act but Sahil Kumar reposed confidence in the DSP. The search of the Aactiva scooty led to recovery of three boxes of 'Tramadol Hydrochloride' 100 mg Celvidol 100-SR (a total of 1500 tablets), apart from an amount of ₹ 8,500/-. The personal search of Sahil Kumar did not lead to any incriminating recovery.
3. It is further the case of prosecution that the aforesaid Sahil Kumar suffered a disclosure statement on 11.11.2020 regarding involvement of petitioner Ajay Kumar Jindal and consequently, petitioner was arrested on 16.11.2020. It is the case of prosecution that upon arrest of Ajay Kumar Jindal, he made a

disclosure statement pursuant to which he got recovered 980 loose tablets from an open space near Government College, Kotkapura.

4. The learned counsel for the petitioner- Ajay Kumar Jindal has submitted that the petitioner has falsely been implicated in the instant case on account of the fact that SI Kulbir Chand who had previously also falsely implicated the petitioner in FIR No. 237 dated 25.12.2019, Police Station City Kotkapura, District Faridkot nurses a grudge against the petitioner as the petitioner has raised issue of his false implication before this Court by filing CRM-M-10772 of 2020 wherein SI Kulbir Chand has been arrayed as a respondent by name and a specific prayer has been made to transfer investigation to some independent agency like Central Bureau of Investigation and notice of motion has been issued and is still pending.
5. The learned Senior counsel has further submitted that infact even at the time of grant of bail to petitioner - Ajay Kumar Jindal in the earlier case i.e. in FIR No. 237 dated 25.12.2019, registered under Section 22 of the NDPS Act at P.S. City Kotkapura, District Faridkot, this Court while noticing the manner in which the petitioner had been involved had made certain observations as regards the police officials of CIA staff, not having preserved the CCTV footage, though a specific order had been passed by the Court. It has further been submitted that since the petitioner had been agitating his false implication in the earlier case and had even moved applications for preserving of CCTV footage of Police Station Kotkapura and Police Station CITA Staff, Jaito on 8.1.2020 wherein an order dated 15.1.2020 (Annexure P-7) had been passed by Additional Sessions Judge, Faridkot, the police ever since has been trying to pressurize the petitioner not to press upon the

allegations against the police official and it is on that account that he has again been falsely implicated in the instant case on the basis of a disclosure statement.

6. The learned Counsel for the petitioner - Ajay Kumar Jindal submitted that the story of the prosecution regarding recovery of 980 tablets from an open place i.e. Government College, Kotkapura at the instance of the petitioner is highly unbelievable as the petitioner who was a Chemist could have safely kept the contraband in his shop without there being any risk of detection and there was no need for him to store a 'commercial quantity' outside his authorized premises.
7. The learned counsel representing petitioner - Sahil Kumar has submitted that the entire case has been foisted upon the petitioners and the recoveries have been falsely planted and that the petitioner - Sahil Kumar had never made any disclosure statement, as alleged by the prosecution. The learned counsel has submitted that he had moved an application before the trial Court under Section 91 Cr.P.C. for producing the call detail record of the police officials concerned with the investigation, which was accepted vide order dated 7.6.2021. The learned counsel has submitted that the said call detail record has been annexed with the reply filed by the State in CRM-M-26335-2021 and which clearly shows that it is a case of false implication inasmuch as the presence of SI Kulbir Chand and also of DSP Jaspal Singh is rendered highly doubtful.
8. It has also been submitted that the brother of the petitioner Sahil has filed a petition i.e. CRM-M-26335-2021 (Annexure P-14) before this Court seeking transfer of the investigation pertaining to FIR No. 244 dated 9.11.2020, P.S.

City Kotkapura, District Faridkot i.e. the instant case wherein this Court vide order dated 12.7.2021 has issued notice of motion and has directed the DIG, Faridkot Range to file reply.

9. Opposing the petition, the learned State counsel has submitted that the petitioner - Ajay Kumar Jindal has been into drug peddling and the mere fact that more than one FIR has been lodged against him or that he has been involved in more than one case cannot be interpreted to mean that he is being falsely implicated but would rather show that he is repeatedly indulging into drug peddling. The learned counsel has further submitted that till date there is no such finding of any court that the police officials are inimical towards the petitioner or that the petitioner had even been falsely implicated in any case. The learned counsel submits that the police officials had effected the recoveries in discharge of their official duties. The learned State counsel has further submitted that since huge recovery had been effected from Sahil Kumar who had disclosed the name of petitioner - Ajay Kumar Jindal and the said disclosure statement virtually stands substantiated from the recovery of contraband at the instance of petitioner – Ajay Kumar Jindal also, no case for grant of bail is made out, particularly keeping in view the fact that it is a case of recovery of ‘commercial quantity’ of contraband. The learned State counsel has, however, informed that the petitioners have been behind bars since the last more than 11 months and that no prosecution witness has been examined so far.
10. I have considered rival submissions addressed before this Court.
11. It is not in dispute that the petitioner - Ajay Kumar Jindal had previously been nominated as an accused in another FIR i.e. in FIR No. 237 dated

25.12.2019, Police Station City Kotkapura, District Faridkot on the basis of a disclosure statement as he has also been nominated in the instant case. The petitioners, particularly petitioner - Ajay Kumar Jindal while pressing upon the case for grant of bail has mainly contended that they have been falsely implicated.

12. Some of the relevant facts, which would be helpful to appreciate the aforesaid contentions are stated below in chronological order :-

- 25.12.2019 One Dharmender Singh arrested in FIR No.237 dated 25.12.2019, under Section 22 of the NDPS Act, P.S. City Kotkapura, District Faridkot.
- 26.12.2019 Said Dharmender Singh suffered a disclosure statement naming Ajay Kumar Jindal at about 8 PM as alleged by the prosecution. However, as per Ajay Kumar Jindal, he had been arrested by SI Kulbir Chand at about 6:30 PM. Subsequently, the arrest of Ajay Kumar Jindal was shown to be effected at about 9:30 PM on the said date and it was alleged by police that Ajay Kumar Jindal was kept confined in the lock-up of Police Station City Kotkapura.
- 28.12.2019 The alleged disclosure statement of Ajay Kumar Jindal was recorded in Police Station City Kotkapura as per the record shown by the prosecution. However, infact Ajay Kumar Jindal was never taken to Police Station City Kotkapura in FIR No.237 dated 25.12.2019.
- 08.01.2020 Ajay Kumar Jindal filed an application for preserving the CCTV footage of Police Station City Kotkapura and Police Station CIA Staff Jaitu from 6 PM of 26.12.2019 till 28.12.2019, on which notice was issued and response was sought from the Incharge Officers.

- 15.01.2020 Affidavit was filed by the SHO, Police Station City Kotkapura that there are four cameras installed in Police Station City Kotkapura. Affidavit was also filed by SI Kulbir Chand that no CCTV camera was installed in Police Station CIA Staff Jaitu.
- 15.01.2020 Ld. Court below had passed a specific order to preserve the CCTV footage of Police Station City Kotkapura and directed the SSP, Faridkot to comply with the same.
- 10.01.2020 The father of Ajay Kumar Jindal moved a representation to
16.01.2020 Registrar, Hon'ble Punjab and Haryana High Court and Chairman, Punjab State Human Rights Commission, Chandigarh that Ajay Kumar Jindal was wrongly arrested by the CIA Staff Jaitu so as to implicate him in one case or the other.
- 22.01.2020 Letter No. 167/Litigation dated 22.01.2020 was received at Police Station City Kotkapura from the office of SSP, Faridkot to comply with the order dated 15.01.2020 and subsequently, on the same day MHC entered the same in Register No.5A at Sr. No. 227-5A dated 22.01.2020 and produced the same before Inspector Jasvir Singh (the then SHO of Police Station City Kotkapura). However, he had not marked the same to any official for compliance and to preserve the CCTV footage.
- 23.01.2020 to Ajay Kumar Jindal was taken in remand in FIR No. 137 dated
25.01.2020 25.09.2019 under Section 22/29 of the NDPS Act in Police Station Jalalabad. But, thereafter released on the basis of inquiry conducted by SP (Investigation) Fazilka that no role of Ajay Kumar Jindal was found in the said case. The same was approved by SSP, Fazilka vide Inquiry Report dated 28.01.2020.
- 04.02.2020 Ajay Kumar Jindal was released on interim bail in FIR No. 237 dated 25.12.2019 as report of FSL had not been received.

- 13.03.2020 Ajay Kumar Jindal filed petition in this Court seeking direction against the erring officers specifically naming SI Kulbir Chand, Incharge CIA Staff Jaitu, SI Jaskaran Singh and SHO Police Station City Kotkapura i.e. CRM-M-10772 of 2020 wherein notice of motion was issued and the case was fixed for 20.04.2020. However, due to COVID-19 pandemic, the case was adjourned further by general order.
- 30.04.2020 The prosecution agency, in a hurried manner, filed challan in the absence of petitioner by assigning a reason that Ajay Kumar Jindal is putting pressure on investigating officer and SHO Police Station City Kotkapura by giving complaints to Senior Officers.
- After presentation of the challan, Ajay Kumar Jindal had also appeared before the higher authorities to prove his innocence and apprised them about the conduct and acts of SI Kulbir Chand and other officials of Police Station City Kotkapura.
- 09.11.2020 SI Kulbir Chand arrested Sahil Kumar in FIR No. 244 dated 09.11.2020 under Sections 22/29 of the NDPS Act, registered at P.S. City Kotkapura.
- 11.11.2020 Disclosure statement of Sahil got recorded against Ajay Kumar Jindal and he was nominated as accused in the present FIR i.e. FIR No. 244 dated 09.11.2020.
- 16.11.2020 Ajay Kumar Jindal was arrested from the shop in the morning by ASI Hardev Singh without showing any warrants or any other documents.
- 19.11.2020 The disclosure statement of Ajay Kumar Jindal was recorded and thereafter 980 loose intoxicant tablets were shown to be recovered from the petitioner from one open place near Government College, Kotkapura.

13. From the aforestated sequence of events, the following facts can be discerned:-

- (i) that the petitioner - Ajay Kumar Jindal had earlier been involved in
FIR No. 237 dated 25.12.2019, Police Station City Kotkapura,

District Faridkot wherein although he was not named in the FIR or ever arrested at the spot but was subsequently nominated on the basis of a disclosure statement.

- (ii) The petitioner Ajay Kumar Jindal, while agitating his false implication, moved an application for preserving CCTV footage of the police stations concerned wherein direction was given by Additional Sessions Judge, Faridkot on 15.1.2020 to preserve the said footage.
- (iii) However, despite the aforesaid order dated 15.1.2020, CCTV footage was not preserved. Ajay Kumar Jindal filed a petition in the Court for transfer of investigation in March, 2020.
- (iv) In April, 2020, the police presented a challan in a hurried manner and in the absence of the petitioner Ajay Kumar Jindal on account of which the petitioner appeared before higher authorities and apprised them about the conduct of SI Kulbir Chand.
- (v) Shortly thereafter, in November, 2020, the petitioner Ajay Kumar Jindal came to be involved in the instant case wherein he has been nominated as an accused on the basis of a disclosure statement and a recovery of 980 tablets is shown to have been effected at his instance from an open space.

14. The aforesaid sequence of events would certainly put the Court at a caution and cast a heavy burden on the Court to scrutinize the facts and evidence, all the more minutely to rule out false implication. The police would also be required to explain its conduct, particularly as regards its failure to preserve the CCTV footage despite order dated 15.1.2020 of the Special Court,

Faridkot. The petitioners have already been behind bars for a period of about 11 months. Conclusion of trial is likely to consume time.

15. Having regard to the totality of the facts and circumstances, in my opinion, it is a fit case where the petitioners can be extended the concession of grant of bail. Both the petitions, as such, are accepted and the petitioners are ordered to be released on regular bail on their furnishing bail bonds/surety bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.
16. It is, however, clarified that none of the observations made above shall be construed to be an expression on merits of the main case.

11.10.2021

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(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No