

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

CRM-M No.29371 of 2021 (O&M)

Decided on: 06.08.2021

Gurpreet Singh @ Gopi

....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 21/22/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') and Section 25 of the Arms Act, 1959 registered at Police Station State Special Operation Cell, District Amritsar.

Counsel for the petitioner has argued that the petitioner was arrested on 16.04.2020 in FIR No.36 dated 14.04.2020 registered under Sections 27-A/29/30 of the NDPS Act at Police Station Gharinda, District Amritsar (Rural) against Sacatter Singh and Ranjit Singh, who nominated the petitioner as per their disclosure. After 20 days of his custody in this FIR, the police recorded a confessional statement of the petitioner on 06.05.2020, in pursuance to which recovery of 01 Pistol 30 bore, 01 Pistol 9 mm with 03 magazines, 01 drum magazine and 100

cartridges as well as Rs.23.00 lacs, were recovered from his house in village Mahawa, as the present FIR No.6 dated 06.05.2020 was recorded. Counsel for the petitioner has further submitted that earlier investigation was carried out by SI Nirmal Singh and later on, the same was transferred to SI Sukhbir Singh, who in presence of the Deputy Superintendent of Police, Harinderpal Singh has effected the aforesaid recovery. It is further submitted that nobody from the house of the petitioner was joined in the investigation. Counsel for the petitioner has further argued that again, after about 04 days, another disclosure statement was recorded on 10.05.2020, during his custodial interrogation that he has kept Rs.24.00 lacs and 01 Kg Heroin at Guru Nanak Avenue, Street No.1, Amritsar. On the basis of the same again, a raid was conducted and the co-accused Dilbag Singh was arrested and on the confession of Dilbag Singh, recorded on similar line, recovery of 1 Kg and 64 gms of Heroin and Rs.24.70 lacs were recovered in presence of the petitioner by recording a joint recovery memo.

Counsel for the petitioner has further argued that during his custody, the petitioner was also taken in police remand in 02 FIRs i.e. FIR No.20 dated 15.12.2016, at Police Station SSOC, Amritsar and FIR No.21 dated 17.12.2016 at Police Station SSOC, Amritsar, both registered under the relevant provisions of the NDPS Act and Section 489-A, 489-B, 489-C of the Indian Penal Code, 1860 (in short 'IPC'). It is also submitted that after the recording of his first disclosure statement on 06.05.2020, a ruqa was sent to the Police Station and then, the aforesaid recovery was effected and similarly, while recording the second confessional statement on 10.05.2020, again, the recovery was

effected in presence of the co-accused Dilbag Singh.

Counsel for the petitioner has also argued that it is not disputed that the petitioner was in police custody since 16.04.2020 in FIR No.6 where no recovery was effected from him and after 20 days of police remand, the first disclosure statement and after 24 days, the second disclosure statement was recorded. It is also submitted that though as per the police investigation, the recovery is effected from a house, which belongs to the mother of the petitioner, however, there is a dispute regarding the ownership as 02 persons namely Baldev Singh and Judge Singh, have filed CRM-M No.51382 of 2019, against the State of Punjab, Commissioner of Police, Amritsar City, Commissioner of Customs, Amritsar and National Investigation Agency that they should open the seal of the house of Khasra No.79//10 Min. Khata Khatoni No.1531/2041 in the area of village Kala Ghanupur, sub-urban Abadi, New Abadi, Amritsar, as they are the owner in possession of the house.

Counsel for the petitioner has referred to an order dated 09.01.2020 passed in the said petition wherein, on the statement made by the Special Public Prosecutor of National Investigation Agency, that the keys of the house of Baldev Singh and Judge Singh, was handed over in the Court and the petition was disposed of. Counsel for the petitioner has, thus argued that it will be a matter of trial as to who was the owner of the property, which was sealed during the investigation and 02 persons i.e. Baldev Singh and Judge Singh, staked their claim over the same.

Counsel for the petitioner has next argued that there is no

proper compliance of Section 42 of the NDPS Act as only a ruqa was sent after recording the disclosure of the petitioner while in custody of FIR No.36. It is also submitted that on receiving the ruqa, SI Harbir Singh recorded the FIR and then SI Nirmal Singh was sent for investigation and therefore, there is no compliance of Section 42 of the NDPS Act. It is further submitted that no narcotic contraband was recovered in pursuance to the disclosure statement dated 06.05.2020.

Counsel for the petitioner has next submitted that both the disclosure statements of the petitioner dated 06.05.2020 and 10.05.2020, while being in police custody of another FIR, are not admissible, in accordance with law as the same are in violation of the right of the petitioner under Article 20(3) of the Constitution of India.

Counsel for the petitioner has further referred to the memo of recovery relating to co-accused Dilbag Singh @ Bagga, whereby Heroin and some amount were recovered. Counsel for the petitioner has also submitted that in all these documents, the Deputy Superintendent of Police, Amritsar has not signed as a witness and has only verified. Counsel for the petitioner has, then referred to the second disclosure statement of Dilbag Singh @ Bagga recorded on 10.05.2020 in FIR No.6, wherein it is stated that he has purchased the house with Gurpreet Singh @ Gopi, however, the prosecution could not establish that they are the owner of the property. It is next argued that the memo of recovery of Heroin of 1 kg 64 gms from the petitioner Gurpreet Singh @ Gopi and the co-accused Dilbag Singh @ Bagga is, in fact, a joint memo of recovery, which is illegal.

Counsel for the petitioner has, then, referred to his legal

submissions to submit that it is held by the Co-ordinate Bench of this Court vide order dated 14.07.2020 passed in **CRM-M No.13752 of 2020** titled as '*Amritpal Singh vs State of Punjab*', that the sanctity of custodial disclosure statement as well as prosecution version is a matter of trial. He has, then, referred to another order dated 20.05.2021 passed in **CRM-M No.18027 of 2020**, titled as '*Sarabjit Singh @ Loga vs State of Punjab*', wherein bail was granted, considering the fact that the accused (therein) was arrested from Jaipur but no contraband was recovered, however, during his custodial interrogation, he made a disclosure statement and got recovery effected from Kapurthala in Punjab on the next day.

Counsel for the petitioner has then, referred to another judgment of this Court dated 04.11.2015 passed in **CRM-M No.5207 of 2014** titled as '*Saleem Mohammad vs State of Punjab*', to submit that the bail was granted to a person as the contraband was not recovered from the physical possession as he was already in custody. It is, thus, argued that the petitioner was arrested on 16.04.2020 in FIR No.36 and therefore, 02 successive disclosure statements, which were recorded after 20/24 days while being in police custody and leading to recovery of some narcotic contraband or money cannot be termed that the petitioner was in physical possession of the same.

Counsel for the petitioner has next, argued that it has been held by the Hon'ble Supreme Court in **Criminal Appeal No.530 of 2012 arising out of SLP (Criminal) No.7118 of 2010**, titled as '*Arjan Singh vs State of Punjab*', that *where there are inherent improbability of the prosecution case as the police at the first instance has gone to the*

shop of the accused where nothing was recovered and then, on the basis of the disclosure statement of the accused while in custody, poppy husk was recovered from his residence, which was not known to any other person would mean that the accused seems to have invited and led the police to the narcotic substance that lay hidden in a room. It was further held by the Hon'ble Supreme Court that the circumstances in which the recovery is made appears to be wholly unnatural and the accused was acquitted.

Counsel for the petitioner has further referred to the judgment “**Smt. Nandini Satpathy vs P.L. Dani**”, passed in **Criminal Appeal No.101 of 1978**, to submit that it has been held by the Hon'ble Supreme Court that *the police must invariably warn and record the fact about the right to silence against self-incrimination and when the accused is literate to take his written acknowledgment.* In context of Article 20(3) of the Constitution of India, the Hon'ble Supreme Court has observed that *an assurance of awareness and observation of right of silence is given to an accused.*

Counsel for the petitioner has also argued that recording of the disclosure statements of the petitioner, after 20 days of his police custody, do not amount to adoption of a fair procedure of investigation. It is further submitted that under Section 27 of the Indian Evidence Act, recovery of contraband, in pursuance to a statement of an accused, can be proved but cannot be used to show that the accused himself concealed and kept the contraband at a place, where it was found.

Counsel for the petitioner has further relied upon the judgment of the Hon'ble Supreme Court “**Prabhakar Tewari vs State of**

U.P. and another”, 2020(2) RCR (Criminal) 831, wherein it has been observed that *if several cases are pending against an accused, the same cannot be a factor for refusal of prayer for bail as the Court is to exercise its discretion while granting bail, considering the relevant materials on record.*

Counsel for the petitioner has, lastly, argued that the co-accused of the petitioner namely Dilbag Singh @ Bagga, has already been released on regular bail vide order dated 27.05.2021 passed in **CRM-M No.20682 of 2021** as it is also submitted that another co-accused namely Gupreet Singh @ Sajan is also released on bail vide order dated 26.03.2021 passed in **CRM-M No.13368 of 2021**.

Counsel for the State has filed the Custody Certificate and as per the Custody Certificate, the petitioner is in custody for the last 01 year and 02 months. It is also submitted that the investigation took long time; the trial has commenced and the petitioner is involved in the aforesaid 02 FIRs of 2016 and 01 FIR No.36 of 2020.

The arguments raised by counsel for the petitioner regarding the manner of recovery is not disputed.

Counsel for the State has opposed the prayer for bail on the ground that it is the petitioner, who is the main accused as upon recording his disclosure statement while in police custody, in another FIR, a ruqa was sent to the Police Station for registration of the FIR and thereafter, the recovery was effected in presence of a Gazetted Officer and the petitioner.

Counsel for the State has further submitted that during the investigation, it has come that the house, from where the recovery was

effected is, in fact, in the name of the mother of the petitioner. It is next argued that the provisions of Section 42 of the NDPS Act, were duly complied with as it is mentioned in the ruqa itself that the same was sent to the higher police officials. It is also argued that the joint recovery can be made from the accused. It is further submitted that the petitioner was arrested, for the first time, in 02 FIRs of 2016, on the basis of secret information and the disclosure statement made by the co-accused.

Counsel for the State has referred to a judgment of the Hon'ble Supreme Court in ***“State of Kerala vs Rajesh”, 2020 (1) RCR (Criminal) 818***, to submit that *the jurisdiction of the Court to grant bail is circumscribed by the provisions of Section 37 of the NDPS Act and it can only be granted when there are reasonable grounds for believing that the accused is not guilty of such offence.*

Counsel for the State has further relied upon the judgment ***“Madan Lal vs State of Himachal Pradesh”***, passed in **Criminal Appeal No.786 of 2002**, decided on 19.08.2003, to submit that *the conscious possession after recovery of contraband is to be determined with reference to the factual backdrop; there cannot be any logical or precise definition of possession and the word 'conscious' means awareness about the particular fact and therefore, the possession may not be physical possession but constructive.* It is also submitted that similar view has been taken by the Hon'ble Supreme Court in ***“Mohan Lal vs State of Rajasthan”***, passed in **Criminal Appeal No.1393 of 2010**, decided on 17.04.2015.

After hearing the counsel for the parties, I find that the

following facts emerges in this case:-

(a) The petitioner was arrested in FIR No.36 under the NDPS Act on 16.04.2020, registered at the instance of one Sunil Kumar of B.S.F., wherein it was stated that there is a suspicious movement of 02 human beings near the Border fence. Thereafter, the 02 persons were apprehended namely Sakattar Singh and Ranjit Singh, who made some disclosure about their involvement in drugs business and acquaintance with Pakistani smugglers. On the basis of the disclosure statement, the petitioner was arrested, for the first time, on 16.04.2020, however, no recovery was effected from him.

(b) After 20 days, while in custody, the first disclosure statement of the petitioner was recorded on 06.05.2020 and by giving an information to the police, the present FIR No.6 was registered on 06.05.2020. In pursuance to the raid conducted at the alleged house of the petitioner in village Mahawa, arms and ammunition along with Rs.23 lacs were recovered.

(c) After 24 days, while in custody, another disclosure statement of the petitioner was recorded on 10.05.2020 and then, on the basis of the same, 01 Kg 64 gms of Heroin along with some money were recovered jointly from the petitioner and the co-accused Dilbag Singh @ Bagga from a house in Amritsar, which is stated

to be in the name of the mother of the petitioner. Dilbag Singh has already been released on bail, as noticed above.

(d) Two persons Baldev Singh and Judge Singh filed CRM-M No.51382 of 2019 for de-sealing the house claiming themselves to be owner and later, the keys were handed over to them in said petition.

(e) Later on, the petitioner was also arrested as an accused on secret information in 02 FIRs i.e. FIR No.20 dated 15.12.2016 in which Gurnam Singh was arrested in 2016, under the NDPS Act and his disclosure, after about 04 years, however, no recovery was effected from the petitioner.

The petitioner was also arrested in second FIR No.21 dated 17.12.2016 under the NDPS Act and Sections 489-A, 489-B and 489-C IPC, in which co-accused Kaaraj Singh, Malkiat Singh and Jaswinder Singh @ Jassa were arrested in 2016. Even in this case, no recovery was effected from the petitioner as he was arrested after 04 years of the FIR, after recording the disclosure statement of the aforesaid accused.

(f) In both the FIRs, pertaining to the year 2016, nothing was recovered from the petitioner.

(g) The petitioner has set up a defence that the house in Amritsar, from where the recovery was effected from the petitioner and the co-accused Dilbag Singh was,

in fact, never remained in deemed possession of the petitioner as 02 persons namely Baldev Singh and Judge Singh, who have filed CRM-M No.51382 of 2019, praying for issuance of directions to the Punjab Police, Commissioner of Customs, Amritsar and National Investigation Agency, to de-seal the premises and hand over the possession to them, being the owner, on the basis of the sale deed in their favour. Thereafter, the State has handed over the keys to those 02 persons and the said petition was disposed of having been rendered infructuous and, therefore, it will be a matter of trial whether the petitioner was in actual physical possession of this house or not.

(h) The police has recorded a joint memo of recovery of the entire contraband and the money from the petitioner and the co-accused Dilbag Singh, though, the disclosure statement prior to the same was allegedly made by the petitioner only and again, it will be a matter of trial whether the joint recovery memo was prepared, in accordance with law or not.

(i) In the sequence of event as noticed above, in nutshell, the case of the petitioner is that he was arrested in FIR No.36 on the basis of the disclosure statement of co-accused, however, no recovery was effected. Later on, on the basis of 02 successive disclosure statement dated 06.05.2020 and dated 10.05.2020, the recovery of Heroin

and money was effected from the petitioner and his co-accused. The petitioner was also named in 02 FIRs i.e. FIR No.20 and FIR No.21, registered in the year 2016 but arrested, after a period of 04 years. Prior to registration of the present FIR No.6, a ruqa was sent to the Police Station as the petitioner was already in police custody and, therefore, it will also be a matter of trial, whether Section 42 of the NDPS Act, has been properly complied with or not.

After hearing the counsel for the parties and going through the case cited, I find that the 02 successive disclosure statements of the petitioner, after 20/24 days of police custody, will also be tested, during the course of trial, in the light of the right of an accused under Article 20(3) of the Constitution of India; deemed possession of the petitioner from place of recovery and compliance of Section 42 of the NDPS Act are also a matter of trial and therefore, considering all the facts and circumstances of the case, the custody of the petitioner which is more than 01 year and 04 months; the stage of the trial as the prosecution evidence is yet to start; the manner in which the successive disclosure statements have been recorded, after long custody and in view of the fact that 03 FIRs where the petitioner is nominated on the basis of the disclosure statement and no narcotics substance was recovered from the petitioner in these 03 FIRs; the custodial interrogation of the petitioner is not required as the conclusion of the trial will take some time, due to COVID-19 situation, I find it appropriate to release the petitioner on regular bail as his co-accused have already been released on regular

bail.

Accordingly, the present 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.

It is clarified that the observations made hereinabove are only for the purpose of deciding the bail application of the petitioner and will have no bearing on the merits of the case.

(ARVIND SINGH SANGWAN)
JUDGE

06.08.2021
yakub

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No