

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

**CRM-M No.26001 of 2020 (O&M)
Decided on: 16.07.2021**

Sarmail Singh @ Shaila

....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)

CRM-19117-2021

Prayer in this application is for preponing the date fixed in
the main petition.

Heard.

For the reasons stated in the application, the same is
allowed and the main case is taken up today for hearing.

CRM-19118-2021

Heard.

Allowed as prayed for.

Documents (Annexures P-7 to P-27) are taken on record
subject to all just exceptions.

CRM-M-26001-2020

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.17 dated 24.01.2020, for offence punishable

under Sections 21/25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') (Sections 27/29 of the NDPS Act added later) registered at Police Station S.T.F., District S.A.S. Nagar, Mohali.

Counsel for the petitioner has submitted that as per the allegations in the FIR, ASI Balwinder Singh received a secret information that the petitioner – Sarmail Singh @ Shaila is habitual of selling Heroin and he is going on a motorcycle for selling the same to other villages and can be apprehended. On receiving such information, ASI Balwinder Singh sent a ruqa to the Police Station for registration of the case. Thereafter, the police party headed by SI Prabjit Singh prepared a raiding party and put up a barrier where the petitioner was apprehended along with one Gajjan Singh. The petitioner was carrying 400 gms. of Heroin whereas Gajjan Singh was found in possession of 65 gms. of Heroin.

Counsel for the petitioner has further submitted that after giving a notice under Section 50 of the NDPS Act, Baldev Singh, the then Deputy Superintendent of Police, S.T.F. Border, Amritsar, was called at the spot and as per the investigation, the recovery was effected in his presence. It is also submitted that during the investigation, one Ajmer Singh was cited as an independent witness, whose statement was also recorded.

Counsel for the petitioner has prayed for bail to the petitioner, on the following grounds:-

(a) As per the personal search memo of the petitioner dated 24.01.2020, though, as per the prosecution version, the same was prepared on the

asking of the Deputy Superintendent of Police, however, he has not signed the same.

Counsel for the petitioner has then referred to vernacular of this memo to submit that this is a typed document, however, the FIR number was left blank and later on No.17 was filled in handwriting. It is further stated that as per the vernacular of the search memo, FIR No.17 is typed though, it is prepared on the same day at spot under the signatures of SI Prabhjit Singh.

- (b) *Counsel for the petitioner has further referred to the consent memo, in compliance of Section 50 of the NDPS Act, to submit that again FIR No.17 is written by Pen, though, this document is only verified by the Deputy Superintendent of Police.*

Counsel for the petitioner has also submitted that primary role of the Deputy Superintendent of Police was to conduct the search of the petitioner in his presence being the Gazetted Officer, however, the same was not prepared at his instance as it was prepared by SI Prabhjit Singh.

Counsel for the petitioner has thereafter, referred to this document to submit that only verification has been done by the Deputy Superintendent of Police, which demonstrates that it was not prepared on his asking and he has only verified the same, which raises a suspicion where he was actually present at spot.

- (c) *Counsel for the petitioner has further argued that as per the prosecution version, after the proceedings were completed at the spot, the independent witness Ajmer Singh was relieved, however, in his statement recorded under Section 161 Cr.P.C., again the FIR number is typed, which*

show that it was prepared later on and his signatures were obtained on the same.

(d) Counsel for the petitioner has, thus, submitted that from all these documents it will be a matter of trial whether Baldev Singh, the then Deputy Superintendent of Police, actually came at the spot or not, as he has only verified one document and has not signed any other documents, which were prepared at the spot in his presence.

(e) Counsel for the petitioner has then referred to the memo of handing over the case property to the Police Station, when the police party after arresting the petitioner, effected the recovery, completed the investigation at the spot, reached the Police Station and handed over the case property i.e. 400 gms of Heroin to the SHO of the Police Station.

Counsel for the petitioner while referring to this memo of handing over the case property has again argued that FIR number was written in handwriting. It is further submitted that the documents which were prepared at the spot bears FIR number in the typed version whereas after completing all the investigation, this document was prepared in Police Station wherein FIR number was kept blank and later on, filled up.

Counsel for the petitioner has also submitted that all these documents would show that the petitioner has raised a valid defence of his false implication.

(f) Counsel for the petitioner has next argued that when on the next day i.e. on 25.01.2020, the petitioner along with the case property was produced before the Illaqa Magistrate/Duty

Magistrate, it was observed by the Illaqa Magistrate as under:-

“In order to draw representative sample, case property of 400 grams of heroin has been opened in my presence after breaking open the seal and out of which two samples 10/10 grams each of heroin have taken out and put into separate tiny plastic containers which have been sealed with the seal of undersigned “M.K.S.” and Investigating Officer “P.S.”. I have initialed over the parcels.”

Counsel for the petitioner has submitted that the Magistrate has specifically observed that he has put his initials over the parcels.

Counsel for the petitioner has thereafter, referred to the FSL report, prepared by Forensic Science Laboratory, Amritsar, to submit that at Serial No.6 where the description of articles received from the police is mentioned, it is stated that one parcel sealed with 02 seals one each of “M.K.S.” and “P.S.”, alleged to contain Heroin. Seal of the parcels were found intact and tallied with the specimen seal impression. It is thus, submitted that there is no mention in this report that the Magistrate while putting his seal also put his initials on the sample parcel, which was sent to the FSL and therefore, it also raises a suspicion.

(g) Counsel for the petitioner has also submitted that it will be a matter of trial whether Section 42 of the NDPS Act was properly complied with or not as only a ruqa was sent after receiving the secret information. Counsel for the petitioner has also relied upon certain judgments, which are not reproduced here, for the sake of brevity.

(h) Ajmer Singh, later on, has given an affidavit

that on 23.01.2020, when he was present at his house, the police officials of S.T.F. came to his village and picked up the petitioner and later on, he was involved in FIR No.17 on the next day i.e. on 24.01.2020.

(i) The petitioner has relied upon a Panchayatnama which is signed by the Sarpanch, 03 Panches and Numberdar of the village along with some other persons. As per this Panchayatnama, one Amardeep Kaur, who is present member of the Panchayat had put pressure on the petitioner to cast his vote in their favour whereas the petitioner belongs to opposition group and when the party of the petitioner became Sarpanch as well as Panches, he has been falsely implicated in the case.

(j) The petitioner is a labourer and has his own family to support.

Counsel for the State, in reply, has submitted that it is well settled principle of law that merely if an independent witness resiled from the prosecution version or is produced as a defence witness, the same will not shatter the testimony of the official witnesses.

Counsel for the State has also argued that it is also settled law that lack of examination of independent witness do not put any dent on the prosecution version.

It is further submitted that the co-accused of the petitioner namely Gajjan Singh, who was having the non-commercial quantity of Heroin i.e. 65 gms, has already been released on bail.

Counsel for the State has further argued that proper procedure under Section 50 of the NDPS Act was followed as the

Deputy Superintendent of Police was called at the spot and in his presence, 400 gms of Heroin was recovered.

Counsel for the State has also submitted that the petitioner is involved in 04 other FIRs pertaining to the year 2015, 2017 and 2018, however, the petitioner is on bail in those cases.

Lastly, counsel for the State has filed the Custody Certificate today in the Court, though, the Custody Certificate do not reflect any other cases but reflects that the petitioner is in custody for the last 01 year, 05 months and 17 days. Counsel for the State has also not disputed that the challan was presented on 11.06.2020 and till date, charges have not been framed against the accused persons and there are total 19 prosecution witnesses cited as a witness in the case.

After hearing the counsel for the parties, considering the facts and circumstances of the case, I find merit in the present petition as the points taken by the petitioner could not be repelled by the prosecution regarding the discrepancies in the documents prepared at the spot; the affidavit of independent witness and the Certificate given by the Panchayat; the manner in which the investigation is conducted by the Deputy Superintendent of Police, who has only verified one document and has not signed any other documents; all the memos are typed documents and in some documents, FIR number is blank and filled by Pen and in some documents, it is typed by mentioning the FIR number; the discrepancies in the order of the Illaqa Magistrate and the FSL report and also in view of the judgment of ***“Prabhakar Tewari vs State of Uttar Pradesh”***, 2020(2) RCR (Criminal) 831, where it is held that pendency of other cases cannot be taken as a bar to grant the

bail and lastly, also in view of the fact that the petitioner is in custody for the last 01 year, 05 months; till date even charges have not been framed and therefore, no PW has been examined; the custodial interrogation of the petitioner is not required and the conclusion of the trial will take some time due to COVID-19 situation, this 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

16.07.2021
yakub

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