

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

**CRM-M No.31536 of 2021(O&M)
Date of Decision-21.09.2021**

Anwar Masih ... Petitioner
Versus

State of Punjab ... Respondent

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

Present: Mr. R.S. Rai, Sr. Advocate with
Ms. Isha Goyal, Advocate
for the petitioner.

Mr. Bhupender Beniwal, Asstt., 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.23 dated 31.01.2020 registered under Sections 21, 25, 27-A, 29, 61, 85 of the NDPS Act at Police Station STF, District SAS Nagar, Mohali.

[2]. FIR was registered on the basis of statement of Rashpal Singh, AIG, STF, Border Range Amritsar with the allegations that the case bearing FIR No.20 dated 29.01.2020 was registered under Sections 21, 61, 85 of the NDPS Act and Sections 25, 54, 59 of the Arms Act against Happy, resident of Amritsar. The investigation of the said case was being conducted by Inspector Randhir Singh, STF, Border Range. Amritsar. A secret

information was received on 31.01.2020 in the said case that the accused Happy and Ankush Kapoor had already been arrested in the aforesaid case and there was additional information regarding them that Ankush Kapoor along with his companions namely Sukhwinder Singh, Major Singh, Tamanna Gupta, an Afghanistani namely Arman Bashir Mal along with other accomplices and family members have made a secret place in the area of Sultanwind Amritsar for keeping huge quantity of heroin for storage purposes for supplying the same further to their customers. The main ringleader was Ankush Kapoor and his companion Simarjit Singh Sandhu @ Simar. These persons have communications with the smugglers outside India in the countries like Dubai, Pakistan and Afghanistan etc. and Ankush Kapoor through his companion Simarjit Singh Sandhu @ Simar also used to exchange money through Hawala and smuggles heroin and other intoxicant substances at international level. The aforesaid persons kept a black coloured Verna car for making supply of heroin to their customers. All these persons were coming towards Amritsar City for having meals in the late night in the said Verna car. If naka is installed, then all these persons can be apprehended along with the car and heroin in big quantity can be recovered, which has been stored by them. The information was considered to be cogent and reliable and the FIR was registered.

[3]. As per prosecution case, 19 persons are involved in the present case including the petitioner and total 188 kgs 250 grams

heroin, 15 kgs 510 grams intoxicant powder, 22 kgs 620 grams Dextromethorphan, 25 kgs 865 grams caffeine, 3 kgs charcoal, 207 kgs 120 grams intoxicant liquid chemical and other material including utensils for preparing heroin and poly bag smeared with aforesaid contrabands and car were recovered from the co-accused of the petitioner. The allegations against the petitioner are that he is owner of the house from where aforesaid intoxicants were recovered on the basis of secret information. As per prosecution story, the petitioner was involved in smuggling, sale and purchase of heroin.

[4]. The prayer for interim bail of the petitioner in view of recommendations of High Powered Committee was considered by the trial Court as the petitioner was suffering from chronic disease of liver dis-function, for which, he was in continuous treatment. He was found suffering from Hepatitis-B positive/Diabetic, Mellitus/Fatty Liver/b/1, Renal Medical diseases/chronic diarrhea. His case was considered under category of 8.02 of recommendations of High Powered Committee of the High Court. The criteria and procedure of release of under-trial prisoners as per para Nos.8.2 and 9.3 are that all the prisoners in custody suffering from chronic diseases be released on six weeks interim bail, which is extendable till further time to be fixed in this regard. The provision has been made in respect of under-trial prisoners as well as convicts in custody suffering from chronic diseases mentioned in the aforesaid paragraphs. The case of the petitioner was considered under para

No.8.2 of the report of High Powered Committee and interim bail was granted to the petitioner for six weeks on his furnishing bail bonds in the sum of Rs.1,00,000/- with one surety in the like amount vide order dated 06.07.2020 passed by the Additional Sessions Judge, Amritsar. The case was adjourned to 17.08.2020 for appearance of the petitioner. On 17.08.2020, the interim bail of the petitioner was extended for a period of six weeks on the same conditions as per order dated 06.07.2020.

[5]. Vide order dated 28.09.2020 passed by Additional Sessions Judge, Amritsar, it was found that the petitioner was still under treatment and interim bail earlier granted to him should be extended and the same was extended for another six weeks. Petitioner was directed to come present on 09.11.2020. The case was taken up on 22.12.2020 by the Additional Sessions Judge, Amritsar and interim bail of the petitioner was again extended for six weeks with a direction to surrender before the Court on 03.02.2021. Interim bail was further extended for another six weeks vide order dated 08.04.2021 and the petitioner was directed to surrender in the Court on 21.05.2021.

[6]. Additional Sessions Judge, Amritsar ultimately took up the case on 12.07.2021 on the application for extension of interim bail. Learned State counsel pointed out that in subsequent report of Hon'ble High Powered Committee, it has been made clear that in NDPS cases, if the accused are involved in commercial quantity of

narcotics, then they are not entitled for interim bail. A report from jail was called and a Board of Doctors was constituted by the Chief Medical Officer. Board of Doctors submitted its report. The petitioner was found suffering from chronic disease. The Court did not find any ground to extend the interim bail granted to the petitioner and dismissed the application. Petitioner was directed to surrender before the Superintendent Jail, Amritsar within 10 days from 12.07.2021, failing which, he was to be arrested by STF.

[7]. Petitioner filed an application for recalling of order dated 12.07.2021 before Judge Special Court, Amritsar and the application was dismissed on the basis of report dated 11.05.2021 of Hon'ble High Powered Committee that under-trial prisoner, who is facing trial for having conscious possession of commercial quantity of narcotics, is not entitled for interim bail. The application was rejected vide order dated 27.07.2021. The investigation of the case has been transferred to NIA. Petitioner was directed to appear on 03.08.2021. The petitioner did not surrender on 03.08.2021 and was arrested only on 15.08.2021.

[8]. Learned Senior Counsel for the petitioner submitted that in fact on 03.08.2021, an application was filed for extending time for surrendering on the ground that the petitioner had gone to Chandigarh for signing the affidavit to be filed in the High Court in the main bail application and due to illness, the petitioner got respiratory problem and was hospitalized in Chandigarh City

Hospital Pvt. Ltd., Sector-8, Madhya Marg, Chandigarh. Due to the aforesaid reason, the petitioner could not appear in person to comply with the order. Petitioner sought to inform his whereabouts. The Court rejected the application on 03.08.2021 on the premise that the petitioner was directed to surrender on or before 03.08.2021 and it was made clear that no further extension shall be given. Petitioner had already availed sufficient time on interim bail.

[9]. Learned State counsel, however, opposed the bail on the ground that the quantity of contraband is commercial in nature and the petitioner has misused the concession of interim bail.

[10]. In view of allegations and default of the petitioner in not surrendering in time, I find that the petitioner has misused the concession of interim bail. He has been arrested only on 15.08.2021 after issuance of non-bailable warrants on 03.08.2021. A person who has not come to the Court with clean hands, does not deserve any sympathetic consideration. After availing repeated concession of interim bail, the petitioner has been arrested now on 15.08.2021.

[11]. Owing to conduct of the petitioner, regular bail is dismissed at this stage.

(RAJ MOHAN SINGH)
JUDGE

21.09.2021
Prince

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No