

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH
(Heard through Video Conferencing)**

Crl. Misc.M-26414 of 2020 (O&M)
Date of Decision: February 24, 2021

Ajay Kumar @ Kaku

...Petitioner

Versus

State of Punjab

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Ruhani Chadha, Advocate
for the petitioner.

Mr. Luvinder Sofat, AAG, Punjab.

JAISHREE THAKUR, J.

1. The petitioner seeks grant of regular bail in FIR No. 22 dated 30.1.2020 registered under Sections 21, 29 of the Narcotics Drugs and Psychotropic Substances Act 1985, at Police Station Special Task Force Wing, SAS Nagar.

2. Mr. Ruhani Chadha, Advocate, learned counsel appearing on behalf of the petitioner, urges that the petitioner was not named in the FIR and has been falsely implicated only on the basis of a statement given by co-accused Harjit Singh and Kewal Singh and therefore the petitioner ought to be allowed bail. It is argued that there was an alleged recovery of 352 gms heroin from the petitioner's house on the basis of his disclosure statement, however the recovery memo has not been signed by him. Learned counsel for the petitioner herein relies upon judgements rendered in CRM-M-No. 5685 of 2016 titled **Amandeep Singh Versus State of Punjab, decided on 9.1.2017**, where in similar circumstances regular bail was allowed.

Reference is also made to similar orders passed in Crl. Misc. M 5207 of 2014 titled **Saleem Mohd Versus State of Punjab decided on 4.11.2015**, Crl. Misc. M-17069 of 2014 titled **Baz Singh @ Baj Versus State of Punjab decided on 23.5.2014**, Crl. Misc. M 19403 of 2014 titled **Nirmal Singh @ Nimma Versus State of Punjab decided on 9.6.2014** and Crl. Misc. M 44326 of 2015 titled **Harwant Singh @ Harbans Singh Versus State of Punjab decided on 29.1.2021**. He also relies upon a judgement rendered in **Sandeep Kumar versus State of Punjab 2020 (1) Cri. CC 46**, where conviction was set aside as the recovery memo had not been signed by the accused.

3. Whereas, Mr Luvinder Soffat, AAG, Punjab, learned counsel appearing on behalf of the respondent argues that on the basis of a secret information received, Harjit Singh and Kewal Singh were apprehended while they were travelling in a car. There was a recovery of 1 Kg and 28 gm of heroin along with an electronic scale and 125 empty polythene pouches from them. Kewal Singh disclosed that the heroin was purchased from the petitioner who was arrested and on his disclosure statement there was a recovery of 352 gms of heroin and also ₹10,00,000/- as drug money. Apart from the recovery of 352 gms of heroin and drug money, the petitioner also nominated Mehar Chand as a person who helped him in distribution of heroin. Thereafter, Mehar Chand was arrested and on his disclosure statement, recovery of ₹4,50,000/- was effected from him. It is submitted that the petitioner is a habitual offender and he has several FIRs pending against him, one of them being FIR No. 273 of 2017 under Sections 22, 61, 85 of NDPS Act, registered at Police Station Shimlapuri, Ludhiana. He further submits that there is no provision for getting a recovery memo

signed from the accused as no person can be made to sign an incriminating evidence against him. Mr. Soffat also urges that a co-ordinate Bench of this Court has already dismissed the regular bail application of Mehar Chand, who had been nominated as an accused by the petitioner herein and from whom there was a recovery of ₹4,50,000/-, by an order passed in CRM-M-No. 30387 of 2020 dated on 7.12.2020.

4. I have heard learned counsel for the parties and with their assistance and have gone through the pleadings of the case.

5. As per the case set up, the petitioner was not apprehended on the spot but was named by co-accused who were in custody. On secret information, a picket was set up and two persons were apprehended with over 1 kg of heroin, along with an electronic scale and 125 polythene bags. It was disclosed that the petitioner was the person who supplied heroin to them. The petitioner was arrested and on his disclosure statement there was a recovery of 352 gms of heroin from his residence and on his second disclosure statement a sum of ₹10 lakhs as drug money was recovered. The argument raised that the petitioner is entitled to bail, as he was not named in the FIR and was nominated as an accused on the basis of a disclosure statement of a co-accused in custody, would be of little relevance, as on his own disclosure statement there has been a recovery of 352 gms of heroin from his residence and also an amount of ₹10 lakhs recovered subsequently.

6. In **Golakondas Venkateswara Rao versus State of Andhra Pradesh (2003) 9 SCC 277**, the Supreme Court held that the “*provisions of Section 27 of the Evidence Act are based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true and consequently the said*

information can safely be allowed to be given in evidence because if such information is further fortified and confirmed by the discovery of articles or the instrument of crime and which leads to the belief that the information about the confession made as to the articles of crime cannot be false.” It was further held that merely because the recovery memo was not signed by the accused, the recovery itself would not be vitiated as every case has to be decided on its own facts. Further, in **State of Rajasthan versus Teja Ram 1999 (2) RCR (Criminal) 285**, the Supreme Court concluded *"The resultant position is that the Investigating Officer is not obliged to obtain the signature of an accused in any statement attributed to him while preparing seizure memo for the recovery of any article covered by Section 27 of the Evidence Act. But if any signature has been obtained by an Investigating Officer, there is nothing wrong or illegal about it."* The same ratio was followed in **Dr. Sunil Clifford Daniel versus State of Punjab, (2012) 11 SCC 205**.

7. Provisions of Section 37 of the NDPS Act are stringent and bans the grant of bail until the twin conditions specified in the sub section (1) are not satisfied i.e (i) there are reasonable grounds for believing that the accused is not guilty of such offence; and (ii) that he is not likely to commit any offence while on bail. The bail of the co-accused who was arrested on the disclosure statement of the petitioner stands rejected as there was a recovery of ₹4, 50,000/- from him as drug money. The petitioner is already involved in another FIR, apart from there being recovery of heroin of commercial quantity and ₹10, 00,000/- of drug money. Therefore, at this stage the involvement of the petitioner cannot be ruled out.

8. The judgments as relied upon by the petitioner would not be

applicable to the facts of the present case and are distinguishable. In the case of **Sandeep Kumar** (supra), the conviction was set aside on consideration of various factors, one of them being that details of FIR were mentioned on documents prior to registration of the FIR. The judgement noticed that all documents prepared, had the signature of the accused other than the recovery memo, which caused a suspicion about actual recovery. It was also opined that proper procedure was not followed by tallying the seal on the parcel with the sample seal chit. However, it appears that the law as settled in **Teja Ram, Golakondas Venkateswara Rao or Dr. Sunil Clifford Daniel (Supra)**, regarding an accused signing on the recovery memo was not cited before the Hon'ble Bench.

9. For the reasons afore-stated, the instant petition is dismissed. However, nothing stated herein above would be construed as an expression of opinion on the merits of the case.

February 24, 2021
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No