

In virtual Court

CRM-M-29643-2020

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: 19.07.2021

1. CRM-M-29643-2020 (O&M)

Mukhtiar Singh @ Pinka @ Rinka and another

... Petitioners

Vs.

State of Punjab

... Respondent

2. CRM-M-30064-2020 (O&M)

Manmohan Singh @ Guroo and another

... Petitioners

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Bipan Ghai, Sr. Advocate with
Mr. Paras Talwar, Advocate
for the petitioners (in CRM-M-30064-2020).

Mr. Vipul Jindal, Advocate
for the petitioners (in CRM-M-29643-2020).

Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in both these petitions is for grant of regular bail to

petitioners Manmohan Singh @ Guroo and Mukhtiar Singh @ Pinka @ Rinka, in FIR No.79 dated 30.06.2020 under Sections 21/25/29 of NDPS Act and Sections 25/27 of Arms Act, registered at Police Station Special Task Force, District STF Wing, Mohali, District SAS Nagar (Mohali) and FIR No.95 dated 01.07.2020 under Sections 307, 34 IPC and Section 25 of Arms Act, registered at Police Station Harike, District Tarn Taran.

It is argued on behalf of the petitioners that the FIR was registered on the basis of secret information with the allegations that co-accused Manjinder Singh and the petitioners are indulged in the business of selling intoxicant substance and they can be nabbed. A ruqa was sent to police station and thereafter, police party apprehended Manjinder Singh and 260 grams of heroin was recovered in presence of Inspector Jaswinder Singh and on the basis of his disclosure statement, the petitioners were also nominated. It is further submitted that later, police party led by SI Sukhwinder Singh laid a barrier and two persons i.e. the petitioners were seen coming on a motorcycle and on seeing the police party, they started firing towards the police party from their respective weapons with intention to kill, however, SI Sukhwinder Singh along with police party apprehended both the accused persons and thereafter, made a Whatsapp call to Inspector Jaswinder Singh requesting him to reach at the spot. Upon search of the motorcycle, from its seat, 260 grams of heroin was recovered, which was wrapped in a polythene bag.

The common argument by both the learned counsel is that the recovery memo of the heroin as well as motorcycle, dated 30.06.2020, is neither

signed by the petitioners nor by SI Sukhwinder Singh, who is first Investigating Officer and was present at the spot, when the petitioners allegedly opened fire and then recovery was effected in presence of Inspector Jaswinder Singh. It is also argued that no proper procedure was followed under Section 42 of NDPS Act, as mere sending of ruqa does not dispense with the requirement of Section 42 of NDPS Act. It is further argued that the police party was comprising of 12 persons and they were carrying firearms, however, it is stated that the petitioners have opened fire from their licensed weapons and without using any firearm by the police party, they have apprehended the petitioners, which makes the case doubtful and these allegations have been levelled only to exaggerate the nature of offence. It is next argued that the petitioners were shown arrested in FIR No.79 under NDPS Act on 30.06.2020, whereas in the second FIR No.95 under Section 307 IPC, their arrest was shown on 05.07.2020 regarding the same incident, which allegedly took place at the time of their arrest. Thus, it shows that arrest of the petitioners, after five days, in FIR No.95 under Section 307 IPC is nothing, but an attempt to aggravate the nature of offence.

It is further argued that both the petitioners are not involved in any other case under NDPS Act and they are in custody for the last more than 01 year and till date, no prosecution witness has been examined, as the trial has delayed substantially due to COVID-19 situation. It is also submitted that co-accused Manjinder Singh, who was arrested at the first instance, has already been released on regular bail.

Learned State counsel, in reply, has argued that the investigation

was carried out in a proper manner and after the information was received by SI Sukhwinder Singh, he sent information to the police station and then called second Investigating Officer Inspector Jaswinder Singh and in his presence, recovery was effected. It is further submitted that at the time, when the alleged firing incident took place, Inspector Jaswinder Singh was not there and the petitioners were apprehended by SI Sukhwinder Singh, however, learned State counsel could not dispute the fact that when the recovery of heroin and motorcycle was effected, SI Sukhwinder Singh was present throughout even in the remaining part of the investigation, however, he never signed the memos. It is next submitted that the petitioners were also arrested in FIR No.95, which was registered on the next day and their arrest was shown on 05.07.2020, as they were already in custody in FIR No.79.

After hearing learned counsel for the parties, without commenting anything on merits of the case, I find it to be a case for grant of concession of regular bail to the petitioners, for the following reasons: -

- (a) For the same incident, two different FIRs have been registered on two successive dates. In FIR No.79 registered under NDPS Act, it was alleged that firearm was used and in FIR No.95 registered under Section 307 IPC, the petitioners were shown to be arrested on 05.07.2020, after 06 days without any explanation, as they were already arrested on 30.06.2020.
- (b) In the memo of recovery and some other memos prepared at the spot, SI Sukhwinder Singh has not signed, though he was part of

the investigating team.

- (c) The arguments raised on behalf of the petitioners that they were carrying licensed weapons along with live cartridges and after their arrest on 30.06.2020, as an afterthought, FIR under Section 307 IPC was registered on the next day, by showing that they have fired upon the police party, is an attempt of the police party to make the offence more serious, therefore, it is yet to be seen during the course of trial why their arrest was shown after six days on 05.07.2020.
- (d) It will also be a moot point to be decided during the course of trial whether provisions of Section 42 of NDPS Act were complied with or not by the police party.

In view of the above, both these petitions are allowed and the petitioners are directed to be released on regular bail subject to furnishing their bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate, concerned.

Both petitions stand disposed of.

A photocopy of this order be placed on the file of connected case.

[ARVIND SINGH SANGWAN]
JUDGE

19.07.2021
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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No