

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

210

CRM-M-36193-2021

DATE OF DECISION: 15.12.2021

SURINDER SINGH

... Petitioner(s)

Versus

STATE OF PUNJAB

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present: Mr. Kamal Narula, Advocate
for the petitioner.

Mr. Karanbir Singh, AAG, Punjab.

ANUPINDER SINGH GREWAL, J. (ORAL)

The petitioner is seeking anticipatory bail in FIR No.160 dated 12.06.2021, under Sections 15/29 of the NDPS Act, 1985 (Section 15 (c)/25 of the NDPS Act, 1985 added later on), registered at Police Station Sadar Fazilka, District Fazilka.

A coordinate Bench of this court on 03.09.2021, had passed the following order:-

“Case is being taken up for hearing through Video Conferencing due to Covid-19 pandemic.

Prayer in the petition under Section(s) 438 Cr.P.C. is for grant of anticipatory bail to the petitioner in case FIR No.160 dated 12.06.2021 registered under Sections 15/29 of NDPS Act, 1985 to which Section 15(c)/25 added lateron at Police Station Sadar Fazilka, District Fazilka.

Learned counsel contends that the petitioner is the owner of the truck in question which was being driven by co-accused Sukhwinder Singh and Raj Singh from whom 80 kg of poppy husk was recovered on their arrest and the petitioner is sought to be implicated solely on account of being the owner of the vehicle whereas there is no material to connect the petitioner with the commission of offence. Learned counsel relies upon the decision of Hon'ble the Supreme Court in **Bhola Singh versus State of Punjab 2011 (2) RCR (Criminal) 337** to contend that it was only if there was material to prove beyond reasonable doubt that the petitioner had knowledge of use of the vehicle belonging to

him for any improper use by the driver or the cleaner of the truck for ferrying the poppy husk that a presumption under the NDPS Act, 1985 could be drawn against the petitioner. Relevant extract of the aforesaid decision in Bhola Singh's case (supra) is reproduced as under:

"6. Mr. Kuldip Singh, the learned counsel for the State of Punjab, has however supported the judgment of the Trial Court. We however repeatedly asked the learned counsel as to whether there was any evidence as to the involvement of the appellant, other than that he was the co-owner of the truck and that he had given a wrong address. The learned counsel fairly stated that there was no other evidence against the appellant.

6A. We have considered the arguments advanced by the learned counsel. We see that Section 25 of the Act would not be applicable in the present case as there is no evidence to indicate that Bhola Singh the appellant had either knowingly permitted the use of the vehicle for any improper purpose. The sine qua non for the applicability of Section 25 of the Act is thus not made out. The High Court has however drawn a presumption against the appellant under Section 35 of the Act. This provision is reproduced below :

"35. Presumption of culpable mental state :-

(1) In any prosecution for an offence under this Act which requires a culpable mental state of the accused, the Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the act that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation :- In this section "culpable mental state" includes intention, motive knowledge of a fact and belief in, or reason to believe, a fact.

(2) For the purpose of this section, a fact is said to be proved only when the court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of probability."

Notice of motion.

Mr. Sarabjeet Singh Cheema, Asstt. AG, Punjab, accepts notice on behalf of the respondent and requests for time to file reply and to argue the case.

Adjourned to 23.09.2021.

In the meantime, arrest of the petitioner is stayed, till the next date."

This Court, by the order dated 17.11.2021, had directed the petitioner to appear before the Investigating Officer and join the investigation and in the event of his arrest, he was to be released on ad-interim bail to the

satisfaction of the Investigating/Arresting Officer, subject to the conditions envisaged under Section 438(2) Cr.P.C.

Learned State counsel, upon instructions from ASI Darshan Singh, contends that the petitioner has joined investigation.

In view of the above and the petitioner having joined investigation, the order dated 17.11.2021 granting interim bail to the petitioner is made absolute.

However, the petitioner shall abide by the conditions stipulated under Section 438(2) Cr.P.C. He shall also join investigation as and when called upon to do so.

The petition stands disposed of.

(ANUPINDER SINGH GREWAL)
JUDGE

15.12.2021

SwarnjitS

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