

In virtual Court

CRM-M-34733-2020

-1-

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-34733-2020 (O&M)
Date of decision: 09.08.2021

Lakhbir Singh

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. A.S. Manaise, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for grant of regular bail in FIR No.57 dated 07.05.2020 under Sections 18/29 of NDPS Act, registered at Police Station Maqsudan, District Jalandhar Rural.

Learned counsel for the petitioner, at the very outset, relies upon the order dated 25.03.2021 passed in CRM-M-36307-2020, vide which co-accused Angrej Singh, who was initially granted interim bail, was granted the concession of regular bail later on. The operative part of the order reads as under: -

“...Learned counsel for the petitioner herein inter alia would

argue that on the personal search of the petitioner 2 kg opium was allegedly recovered from his waist, which is well below the commercial quantity of 2.5 kgs. It is submitted that there is non-compliance of Section 42 of the NDPS Act. It is argued that as per Section 42(2) of the NDPS Act, there is a requirement for an Officer who takes down any information in writing under Sub-Section(1) regarding any offence having being committed, which is punishable under the NDPS Act, or records grounds for his belief under the proviso thereto, to send a copy thereof to his immediate official superior within 72 hours. In the instant case the ruqa was sent by SI Pankaj Kumar to the Police Station, where the ruqa was received by an officer of the same designation, namely, SI Raghubir Singh and, therefore, there is non-compliance of Section 42(2) of the NDPS Act as the ruqa was not received by a person who was superior in rank to SI Pankaj Kumar. It is also argued that the recovery memo would reflect that the FIR number had already been filled in prior to the registration of the FIR which was registered at 6:10 pm wherein the ruqa was received in the Police Station at 5:15 pm. He would place reliance upon a judgment rendered by the Coordinate Bench of this Court in 'Criminal Appeal No.2135-SB-2006 titled as Ajay Malik and others Vs. State of U.T. (2009) 3 RCR CrI.Case-649' to buttress his contention. It is further argued that the same judgment has been

relied upon by another Coordinate Bench of this Court in 'CRM-M-35997-2020 titled as Ashok Kumar @ Ashoka Vs. State of Punjab'. It is also argued that there is an inordinate delay in sending the contraband to the Forensic Science Laboratory as in fact the contraband was seized on 07.05.2020 but the sample same has been delivered to FSL on 06.06.2020 and there is no explanation forthcoming as to why there was this delay.

Learned counsel appearing on behalf of the respondent-State on the other hand would submit that the argument as regards noncompliance of Section 42(2) of the NDPS Act is not sustainable. In fact, as per the reply filed, the ruqa was sent to the SHO of the Police Station and it was received by SI Raghbir Singh who was the duty officer on 07.05.2020 as the Officer Incharge because Inspector Rajiv Kumar, SHO, was not present in the Police Station as he was on patrolling duty on 07.05.2021 from 10:20 am to 10:30 pm and SI Raghbir Singh had been left Incharge of the Police Station. A similar observation has been made in 'CRM-M-747-2018 titled as Prabh Singh @ Harry and another Vs. State of Punjab'. It is also submitted that immediately on receipt of the said information, necessary information was sent to the higher authorities. So far as the argument regarding recovery memo is concerned, it is argued that the FIR number was filled subsequently as would be evident from a bare perusal of the

same. The FIR number has been filled with a different ink and with a different hand writing, and therefore reliance on judgment in 'Ajay Malik's case (supra) would be misplaced. As regards the third argument raised regarding delay in sending the contraband to the FSL, it is submitted that it was sent well within a reasonable time without the seals being tampered.

I have heard counsel for the parties.

Without going into the merits of the contentions raised and only taking into account the fact that the petitioner was apprehended with 2 kgs of opium, which would not fall within the category of “commercial quantity” and considering that no other case is pending against him, I deem it appropriate to confirm the interim bail, already granted to the petitioner. The petition is allowed. The interim bail granted to the petitioner is made absolute subject to his furnishing fresh bail bonds in the sum of Rs.50,000/- with one surety of the like amount to the satisfaction of trial Court/Duty Magistrate concerned...”

Learned counsel for the petitioner submits that as per allegations in the FIR, the petitioner and his co-accused were apprehended by the police and recovery of 02 kg of opium each was effected from them and 02 kg was recovered from dashboard of the truck and on the next day, on the basis of disclosure statement, 12 kg of opium was recovered from stepny of the truck. Later on, two more persons were nominated on the basis of disclosure

In virtual Court

CRM-M-34733-2020

-5-

statement. It is further submitted that the petitioner remained in custody for about 10 months, when he was granted interim bail vide order dated 25.03.2021 and is not involved in any other case.

Learned State counsel has filed the custody certificate dated 06.08.2021 in the Court today and has not disputed the factual position and on the basis of reply by way of affidavit of Deputy Superintendent of Police, Sub Division Kartarpur, District Jalandhar (Rural), has submitted that proper procedure was followed and commercial quantity of opium was recovered from the petitioner. It is further submitted that though the challan has been presented, however, charges are yet to be framed and total 16 prosecution witnesses have been cited in the report under Section 173 Cr.P.C.

After hearing learned counsel for the parties, without commenting anything on merits of the case and considering the facts and circumstances of the case and the fact that the petitioner is not involved in any other case; he remained in custody for about 10 months and his aforesaid co-accused has already been released on regular bail, this petition is allowed and the order dated 25.03.2021 passed by this Court, vide which interim bail was granted to the petitioner, is hereby made absolute.

[ARVIND SINGH SANGWAN]
JUDGE

09.08.2021
vishnu

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No