

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

**CRM-M No.35407 of 2020(O&M)
Date of Decision-21.09.2021**

Gurpravittar Singh @ Sai

... Petitioner

Versus

State of Punjab

... Respondent

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

Present: Mr. Vipul Jindal, Advocate
for the petitioner.

Mr. Amar Ashok Pathak, Addl., 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.85 dated 07.09.2019 registered under Sections 21, 25, 29 of the NDPS Act at Police Station Special Task Force, District STF Wing, Mohali.

[2]. The FIR was registered on 07.09.2019 on the basis of secret information. On 07.09.2019, first secret information was received by ASI Karamjit Singh against the petitioner, Kulbir Singh and Amritpal Singh in respect of they being engaged in the business of heroin. The said secret information was shared with

Inspector Randhir Singh. A ruqa was written and FIR was lodged in pursuance of secret information. No one was arrested, nor was any raid conducted. On the next day i.e. 08.09.2019, second secret information was received by Inspector Randhir Singh against co-accused Amritpal Singh and Kulbir Singh only. Petitioner was not named in the second secret information. The raid was conducted by Inspector Randhir Singh. Co-accused Kulbir Singh was apprehended, whereas Amritpal Singh succeeded in fleeing away. From Kulbir Singh, 150 grams of heroin was allegedly recovered. Co-accused Kulbir Singh made a disclosure statement and on his disclosure statement, 860 grams of heroin was allegedly recovered from the store room of the house of the petitioner. In the disclosure statement of co-accused Kulbir Singh, the petitioner is alleged to be a supplier, who in turn, getting the contraband from co-accused Balwinder Singh @ Kukku. Co-accused Balwinder Singh @ Kukku has been projected as the main supplier.

[3]. Learned counsel for the petitioner submitted that on the basis of first secret information dated 07.09.2019, only an FIR was registered. There was no compliance of Section 42 of the NDPS Act made by the police in respect of first secret information dated 07.09.2019. On 08.09.2019, second secret information was received and co-accused Kulbir Singh was apprehended. The alleged recovery has been effected on the basis of disclosure statement of co-accused in second secret information. Section 42 of the NDPS has also not been complied with. The main supplier

Balwinder Singh @ Kukku has been granted anticipatory bail by the High Court vide order dated 24.01.2020 passed in CRM-M No.48829 of 2019. Learned counsel further submitted that aforesaid Balwinder Singh @ Kukku and the petitioner were also illegally framed in one more NDPS case, in which, CBI investigation has been ordered by the High Court at the instance of co-accused Balwinder Singh @ Kukku. In CRM-M No.3144 of 2018 titled Balwinder Singh @ Kukku Vs. State of Punjab and others decided on 12.01.2021, the High Court has transferred the investigation of FIR No.16 dated 04.08.2017 under Sections 21, 25, 29, 61, 85 of the NDPS Act and Sections 25, 54, 59 of the Arms Act at Police Station SSOC, Amritsar to CBI after recording incriminating facts. Co-accused Balwinder Singh @ Kukku is on anticipatory bail in the said case.

[4]. In the present case, co-accused Kulbir Singh @ Sonu got the alleged recovery effected on his disclosure statement from the store room of the house of the petitioner. Co-accused Kulbir Singh @ Sonu has been granted regular bail by the High Court vide order dated 06.10.2020 passed in CRM-M No.8573 of 2020. Similarly, co-accused Amritpal Singh, who allegedly ran away from the spot has also been granted regular bail vide order dated 14.07.2020 passed in CRM-M No.13752 of 2020. Petitioner has surrendered before the police on 15.05.2020 and he is in custody since then. Learned counsel further submitted that no raid was conducted in pursuance of first secret information dated

07.09.2021, but FIR was registered. Raid was conducted only in pursuance of second secret information dated 08.09.2019, in which petitioner was not named. At the time of alleged raid in the house of the petitioner, no family member of the petitioner was joined. It has not come forth on record whether the petitioner was only the adult member of the house, who was having exclusive possession of the house in question. Police has not complied with Section 100 Cr.P.C and Section 42 of the NDPS Act. The alleged independent witness cited in the case, is not the resident of locality, rather he is a resident of village, which is 70 kms from the locality in question. It is not the case of the prosecution that the family members of the petitioner ran away on seeing the police party.

[5]. Learned counsel by referring to some case laws submitted that for the offences under Sections 29/25 of the NDPS Act, Section 37 of the NDPS Act is not attracted. Learned counsel made reference to **CRM-M No.75805 of 2018** titled **Sandeep Kumar Vs. State of Punjab** decided on 11.01.2019, **CRM-M No.17343 of 2020** titled **Jaqdish Singh Vs. State of Punjab** decided on 21.07.2020, **CRM-M No.7057 of 2015** titled **Deep Singh Vs. State of Punjab and others (DB)** decided on 27.07.2015 and **CRM-M No.25433 of 2015** titled **Dharamveer and another Vs. State of Punjab** decided on 07.10.2015.

[6]. Learned counsel further submitted that sending of ruqa for registration of FIR, *Ipso facto* does not amount to compliance of

Section 42 of the NDPS Act. The procedure prescribed is distinct.

He made reference to **Darshan Singh Vs. State of Haryana, 2016(1) RCR (Criminal) 333(SC)** and **Sarija Banu Vs. State through Inspector of Police, 2004(12) SCC 266**. Learned counsel also submitted that the petitioner is also involved in two other NDPS cases, in which, he is on bail and the pendency of the other cases alone, is not a ground to discard the bail to the accused/petitioner. Learned counsel referred to **Criminal Appeal No.153 of 2020 (arising out of SLP (Crl.) No.9207 of 2019)** titled **Prabhakar Tiwari Vs. State of UP and another** decided on 24.01.2020.

[7]. At last, learned counsel submitted that protection granted under Article 20(3) of the constitution of India has not been followed. The statements made by the co-accused are *prima facie* in violation of Article 20(3) of the Constitution of India. Right of silence has nowhere been communicated to the petitioner and others. Learned counsel referred to **CRM-M No.29371 of 2021** titled **Gurpreet Singh @ Gopi Vs. State of Punjab** decided on 06.08.2021.

[8]. *Per contra*, learned State counsel opposed the bail on the ground that the recovery effected from the house of the petitioner is commercial in nature. Petitioner is the member of gang, operating in narcotics. He has been named in the first secret information and in the second secret information, he has been

nominated as an accused on the basis of disclosure statement of co-accused, which led to recovery from his house. Even though, recovery memo prepared in the context of recovery from the house of the petitioner is in the name of Kulbir Singh @ Sonu, but the fact remains that the recovery was effected from the house of the petitioner in the presence of independent witness.

[9]. Having considered the submissions made by learned counsel for the parties, I find that the main accused Balwinder Singh @ Kukku has already been granted regular bail. Co-accused in the present case namely Kulbir Singh @ Sonu and Amritpal Singh have already been granted regular bail by the High Court. The complicity of the petitioner based on disclosure statement of co-accused and recovery from an unguided house of the petitioner without associating any family member of the petitioner, would remain debatable. The prosecution has not pleaded that the petitioner is the sole male member of the house and having exclusive possession over the same. Petitioner is in custody since 15.05.2020. The trial of the case may take some time in its culmination.

[10]. For the reasons recorded hereinabove, I deem it appropriate to enlarge the petitioner on regular bail without meaning anything on merits of the case.

[11]. In view of above, the present petition is allowed. Petitioner is ordered to be released on regular bail subject to his

furnishing adequate bail bonds/surety bonds to the satisfaction of the trial Court/concerned Duty Magistrate.

[12]. Nothing expressed hereinabove, would be construed to be an opinion on merits of the case.

(RAJ MOHAN SINGH)
JUDGE

21.09.2021
Prince

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