

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-36504-2020 (O&M)

Date of Decision: 28.01.2021

Rajandeep Singh @ Ghughi

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Vipul Jindal, Advocate, and
Mr. Vishal Khatri, Advocate,
for the petitioner.

Mr. B.S. Sewak, Addl. A.G., Punjab,
for the respondent-State.

SUDIP AHLUWALIA, J.

This is a petition for regular bail filed under Section 439 of the Cr.P.C. on behalf of the petitioner in case FIR No. 94 dated 16.11.2019, under Section 21/25/29 of the N.D.P.S. Act, 1985 registered at Police Station Verowal, District Tarn Taran.

[2]. The petitioner was allegedly apprehended by the CIA Staff, Tarn Taran on the aforesaid date of the FIR and the contraband in the form of 1Kg. 55 grams of Heroin was allegedly recovered from him which happens to be above the commercial quantity.

[3] Ld. Counsel for the petitioner has vehemently argued that his client has been falsely implicated in the case and the recovery allegedly effected from him is a planted one, and that there is no justification, in any case, to keep him in further detention since he has already remained confined in prison for more than 01 year and 02 months by now.

[4] The prayer for bail has been opposed by the State, on whose behalf a reply was filed on 08.01.2021, in which it has been reiterated that the petitioner is not entitled to the concession of bail since the recovery effected from him was above the commercial quantity, and that there is no merit in the other submissions raised on his behalf.

[5] Ld. Counsel for the petitioner has, at the very outset, drawn attention of the Court to the fact that the number of the concerned FIR (94) is seen to be already mentioned in the Recovery Memo ostensibly prepared at the spot from where the petitioner was apprehended, which was a good 15 kilometers away from the concerned Police Station Verowal where the FIR was drawn up only after ruqqa from the spot was sent through HC Avtar Singh 50, who was a member of the Patrolling Party headed by SI Paramjit Singh, which had allegedly intercepted the white coloured Swift Dezire car from which the petitioner allegedly tried to flee away along with a black coloured envelop/ bag on seeing the Police Party. But the said envelope /Carry bag fell down from his hand, after which he was apprehended by the Police Party and on query pertaining to the plastic envelope/ bag, he nervously told that it contains Heroin for being supplied to his customers at village Khadur Saheb, Verowal and other villages, after which, on instruction of the complainant, the petitioner lifted the said bag/ envelope with his own hands, and presented the same before the complainant SI Paramjit Singh. In this backdrop, the submission made by Ld. Counsel for the petitioner is that in view of the decision of the Supreme Court in ***Ram Chander Sharma @ Pandit v. State (NCT Delhi) Criminal Appeal No. 1809 of 2009***, the existence of the FIR on the recovery memo when the FIR was not itself drawn up would point to the case against the

petitioner being a fabricated one. Reliance has thereafter been placed upon an earlier decision of this Court in *Ajay Malik v. State of U.T. Chandigarh, 2009(3) RCR (CrL) 649 (P&H)* which was thereafter followed by the Division Bench in the decision of *Didar Singh @ Dara v. State of Punjab, 2010(3) RCR (Criminal) 337 (P&H) (DB)*. Various Benches of this Court have subsequently granted bail to such accused persons in view of these decisions wherever number of the FIR was seen to have been noted down in the documents purported prepared before registration of the FIR itself.

- [i] CRM-M-38153-2019 titled *Satish Kumar v. State of Punjab*;
- (ii) CRM-M-42370-2019 titled *Tarsem Lal v. State of Punjab*;
- (iii) CRM-M-44921-2019 titled *Gurdeep Singh v. State of Punjab*;
- (iv) CRM-M-32615-2018 titled *Rinku Singh v. State of Punjab*;
- (v) CRM-M-61999-2018 titled *Jatinder Vashisht v. State of Punjab*;
- (vi) CRM-M-34433-2019 titled *Harvinder Singh @ Shammi v. State of Punjab.*

Similarly in :-

- (vii) CRM-20778-2018 in CRA-S-2212-SB-2016 titled *Kashmir Singh @ Kokki v. State of Punjab*; and
- (viii) CRM-19587-2019 in CRA-S-2884-SB-2016 titled *Charno v. State of Punjab*, the benefit of suspension of sentence even in favour of the convicts was granted by this Court for the same reason, i.e. existence of the F.I.R. number on the Recovery Memo/ Documents prepared before registration of the F.I.R.

[6] Ld. Counsel for the State from his side has, however, relied upon a solitary decision of a Single Judge of this Court in *Ashok Kumar and another v. State of Punjab (CRM-M-9939-2011)* in which regular bail

was, however, denied since the Court found that there was a satisfactory explanation by the State by way of various affidavits and ziminies to the effect that in that particular case the space meant for mentioning the FIR number had been kept blank and was subsequently filled up after the Constable through whom the ruqqa had been sent, had returned back to the spot where the Investigating Officer was present, who thereafter filled up the FIR number.

[7] However, in the present case perusal of the Recovery Memo (Annexure P-3) even in vernacular goes to show that it was prepared and signed by the complainant SI Paramjit Singh himself and not by the Investigating Officer SI Baldev Singh, who supposedly reached the spot subsequently. The only two other signatories in the capacity of witnesses to the aforesaid Recovery happen to be ASI Davinder Kumar 967/TT, and ASI Lakhwinder Singh 831/TT, both of whom were according to the FIR itself already the members of the concerned Patrolling Party which allegedly apprehended the petitioner. In fact, there is absolutely no signature or even any mark on the entire document to indicate that it was subsequently endorsed upon by the actual Investigating Officer at any stage after he had reached the spot and taken over the same pursuant to registration of the FIR.

[8] In addition, Ld. Counsel for the petitioner has separately relied upon an appropriate format of the Recovery Memo pertaining to Heroin in FIR No. 232 dated 24.09.2016, Police Station Chheharta Amritsar to demonstrate in what manner the relevant FIR number is to be shown. Perusal of the same goes to show that the recovery from the concerned accused Karan Singh @ Karan s/o Watan Singh was purportedly effected on 23.09.2016, but the relevant FIR No. 232 dated 24.09.2016 was separately

entered on the margin which was totally distinct from the original contents with a separate/categorical noting that the memo in question pertains to the said FIR drawn up on the following day. The said document is now tagged as Annexure 'X' with the record. It would, therefore, be clear that such format was being followed by the Narcotic Cell Authorities of the area for more than three years prior to the apprehension of the petitioner in the present case, and so mentioning of the FIR number in the very beginning of the Recovery Memo as done in the present case, and not by way of a subsequent explanatory endorsement to indicate that it relates to the relevant FIR drawn up subsequently, would only go to support the contention raised on behalf of the petitioner.

[9] Even more serious aspect of the alleged recovery effected from the petitioner was that no compliance under Section 50 of the NDPS Act was even attempted. The petitioner was not given any option to have himself searched before any Magistrate or Gazetted Officer as provided under the Statute before the recovery was effected from him. In this regard, the explanation submitted on behalf of the State is that there was no requirement of any compliance of the provisions under Section 50 of the NDPS Act in the present case, since the recovery in question was made not from “person” of the petitioner, but from the “ground” where he had allegedly thrown the plastic bag/ envelope being carried by him. But this specific averment made in para 6 (iii-iv) of the reply filed on behalf of the State is out and out incorrect, and totally inconsistent with the explicit statement of the complainant in the original FIR itself to the effect that the recovery was made after the petitioner had picked up and presented the envelop **“with his own hands”** to the complainant SI Paramjit Singh, which

has also been specifically taken note of and also underlined, in the preceding para 5 of this Judgment. When admittedly the recovery was effected after the petitioner had presented the alleged contraband with his “own hands” to the concerned Police Officer, it would be altogether absurd to raise a contention that the recovery was made “from the ground” and not from the “hands/person” of the petitioner.

[10] In any case, it further transpires that by now the petitioner has already undergone imprisonment for well above 01 year and 02 months following his arrest and detention on 16.11.2019, and the Trial is yet to commence. For the aforesaid reasons, without commenting any further on the merits of the case as a whole but in view of the serious and apparently serious lapses noted in the matter, the alleged recovery effected from him as also the long detention undergone by the petitioner coupled with the possibility that the Trial which is yet to commence is likely to take a considerable time, further detention of the petitioner for an indefinite period, at this stage, would not appear to be called for.

[11] The petition is, therefore, allowed and the petitioner is directed to be released on bail to the satisfaction of the Ld. Trial Court/ Duty Magistrate, concerned.

28.01.2021

Satyawar

**(SUDIP AHLUWALIA)
JUDGE**

1. Whether speaking/reasoned: Yes/No
2. Whether reportable: Yes/No