

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

1. CRM-M-30945-2019 (O&M)

Ved Parkash

...Petitioner

Versus

State of Punjab

...Respondent

2. CRM-M-41556-2019 (O&M)

Pawan Kumar

...Petitioner

Versus

State of Punjab

...Respondent

3. CRM-M-37069-2020 (O&M)

Amit Chawla

...Petitioner

Versus

State of Punjab

...Respondent

4. CRM-M-14211-2020 (O&M)

Jaskaran Singh

...Petitioner

Versus

State of Punjab

...Respondent

5. CRM-M-28680-2021 (O&M)

Nirbhay Singh

...Petitioner

Versus

State of Punjab

...Respondent

Date of decision: 27.07.2021

CORAM:- HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Sukhdeep Siingh Bhinder, Advocate
for the petitioner in CRM-M-30945-2019.

Mr. B. S. Jatana, Advocate
for the petitioner in CRM-M-41556-2019.

Mr. Chetan Mittal, Sr. Advocate with
Mr. M. S. Nain, Advocate
for the petitioner in CRM-M-37069-2020.

Mr. J. K. Singla, Advocate
for the petitioner in CRM-M-14211-2020.

Mr. Gurdarshan Singh Sindhu, Advocate
for the petitioner in CRM-M-28680-2021.

Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN, J. (Oral)

This common order shall dispose of above noted five petitions as they arise out of the same FIR.

Prayer in these petitions is for grant of regular bail to aforesaid petitioners in case FIR No. 63 dated 23.03.2019, registered under Section 22 of the NDPS Act (Sections 25, 29 of the NDPS Act and Sections 420, 465, 467, 468, 471 of the IPC were added later on) at Police Station Sardulgarh, District Mansa.

As per prosecution, the brief facts are that on 23.03.2019, ASI Dalel Singh along with other police officials, while on patrol duty, received a secret information that co-accused Sadhu Singh and one Rubbi (stated to be petitioner Jaskaran) are dealing in the sale of narcotic substances and

have kept the same in the house of Sadhu Singh. It was further informed that said Rubbi has brought narcotic pills to the house of Sadhu Singh in a white color parcel and if a raid is conducted at the house of Sadhu Singh, a consignment of huge quantity of intoxicant can be recovered. On receiving such information, a *ruqqa* was sent to the police station for registration of the FIR and a request was made for sending some other Investigating Officer at the spot. Inspector Bhupinder Singh was deputed and further investigation was handed over to him. When the police party reached the house of Sadhu Singh, it was found that four persons were keeping narcotic pills in cardboard boxes by packing in small plastic bags and pouches. On inquiry, they disclosed their names as Sadhu Singh, Jaskaran Singh @ Ruby, Nirbhay Singh and Amit Chawla. Thereafter, on counting all the boxes of narcotic pills, 9,000 pills of Cavilodol-100 SR were recovered from Sadhu Singh; from the boxes held by Jaskaran Singh, 10,000 pills of Cavilodol-100 SR were recovered; from the plastic bag held by Nirbhay Singh, 10,500 pills of Cavilodol-100 SR were recovered and similarly from Amit Chawla, 10,500 pills of Cavilodol-100 SR were recovered. Thereafter, from the cardboard boxes kept in the house of Sadhu Singh, total 2,34,000 intoxicant pills were recovered. The accused persons were arrested and the case property was seized and recovery memos, separate personal search memos etc. were prepared.

It is the further case of the prosecution that during investigation, accused persons disclosed that they have purchased 3,54,000 intoxicant pills from Ved Parkash @ Lovely, Bablu and Aman Hospital, Panipat on the payment of Rs. 5 Lakh. It also came in the disclosure of accused Amit Chawla and Nirbhay Singh that the intoxicant pills were to be

sold and used as medicine in the State of Punjab and the said pills were purchased in the name of Mahaveer Traders, Jaipur and Ambey Traders, Mathura. Both the owners of aforesaid two traders used to take money from them for making bills in the name of their firms. On this, Ved Parkash @ Lovely and Bablu were nominated as accused in the present case. Thereafter, Inspector Bhupinder Singh obtained arrest and search warrants from SDJM, Sardulgarh against Ved Parkash @ Lovely, Bablu and Aman Hospital, Panipat. The police party reached Police Station Kotwali, Delhi, where ASI Shelesh Sharma was taken along with the police party to the shop of Jaswant Pharma, where Ved Parkash @ Lovely was present and on inquiry, he disclosed that he has stored intoxicant tablets in heavy quantity in Shashtri Market in the area of PS Geeta Colony and the same can be recovered. The disclosure statement in terms of Section 27 of the Evidence Act was recorded by Inspector Bhupinder Singh and under the supervision of DCP Sardulgarh, the police along with accused reached at the store in Shashtri Market, where a huge quantity of 6,25,000 intoxicant tablets of 'Carisoma' in different kits were recovered along with 1,50,000 tablets of 'Tramadol Hydrochloride'. Apart from this, 36,000 tablets of 'Alprazolam 0.25' and 27900 intoxicant tablets of 'Nitrazepam' and some other intoxicant tablets were also recovered. Thereafter, Ved Parkash @ Lovely was arrested and a recovery memo was prepared and the statement of Vipin Kumar and Babu Ram, who were the drivers, was also recorded in whose vehicle, the tablets were transported by Inspector Bhupinder Singh.

Learned counsel, appearing for petitioner Ved Parkash, has argued that without following the proper procedure under Section 166(4) Cr.P.C., the Investigating Officer conducted the search by not giving any

information to the local police station, under whose jurisdiction the recovery was effected. It is also argued that no notice was given under Section 100 Cr.P.C. and the case property was not produced before the nearest Magistrate to take cognizance of the offence. Learned counsel further submitted that the search was defective. It is also argued that no proper transit remand was taken for petitioner Ved Parkash and there is no evidence that the premises, from where the recovery was effected, belong to this petitioner. It is further submitted that petitioner is in long judicial custody of about 02 years, 03 months and 24 days.

Learned counsel, appearing for petitioner Pawan Kumar, has submitted that no recovery was effected from the petitioner and the petitioner was not named in the secret information. It is further submitted that the petitioner is running a wholesale chemist shop namely M/s Mahaveer Traders at Jaipur having a valid chemist licence under the Drugs and Cosmetics Act, 1940 and he has been nominated on the disclosure of co-accused and, therefore, it will be a matter of trial whether the same is admissible against the petitioner in the light of judgment rendered by Hon'ble Supreme Court in *Tofan Singh vs. State of Tamil Nadu, 2013 (9) SCR 962* as no recovery was effected from him. The petitioner is in judicial custody since 11.09.2019.

Learned senior counsel, appearing for petitioner Amit Chawla, has submitted that petitioner was not present at the spot as at the relevant time, he was at Toll Plaza Ding on NH-9 and after the arrest of the petitioner, his family members have collected a CD of the CCTV footage to show his presence at the said Toll Plaza, which is a place that is 45 Kms. away from the place of occurrence.

Learned senior counsel further submitted that the recovery is from the house of co-accused Sadhu Singh as it is stated in the secret information that Sadhu Singh along with Jaskaran Singh @ Ruby has stored the intoxicant pills.

Learned senior counsel referred to order dated 17.11.2020, vide which, S.P. (Investigation) was directed to file an affidavit after looking into the contents of the CD and the subsequent order dated 19.01.2021, wherein it was directed that CCTV footage of NH-9 Toll Plaza, Sirsa-Fatehabad Road be collected for scientific investigation, however, in the first affidavit filed by the S.P. (Investigation), Mansa, it is stated that the petitioner has not disclosed the source from where the CD was taken and in the second affidavit, it is stated that since the matter is old, the footage stands deleted with the lapse of time.

Learned senior counsel further submitted that the recovery from the petitioner is doubtful as the petitioner has set up a defence that he was not present at the spot and this is a moot point to be decided during trial after leading defence evidence. It is further argued that there is no call details of petitioner Amit Chawla with other accused to show their meeting of mind.

Learned counsel, appearing for petitioner Jaskaran Singh, has argued that though the petitioner was named in the secret information, however, he was not the owner of the house, which in fact belongs to co-accused Sadhu Singh, and, therefore, it will be a matter of trial whether the petitioner was in conscious possession of the contraband recovered from the house of co-accused Sadhu Singh.

Learned counsel further submitted that as per investigation, it is

stated that apart from Sadhu Singh, there were three other persons, namely Nirbhay Singh, Amit Chawla and petitioner Jaskaran Singh, who were holding the bags containing 10,000 intoxicant tablets each. It is further submitted that in the FIR, the name of the petitioner is mentioned as Rubbi and later on, the petitioner is stated to be Jaskaran Singh @ Rubbi and this fact is also to be decided during the course of trial whether the petitioner is the same person who is named in the secret information. Learned counsel further submitted that petitioner is in judicial custody since 23.03.2019 and he is not involved in any other case.

Learned counsel, appearing for petitioner Nirbhay Singh, has though prayed for grant of interim bail on the ground that petitioner is suffering from serious liver infections and is declared a known case of Hepatitis C (HCV) and requires urgent medical treatment. However, he has argued the main case as well.

Learned counsel further submitted that the petitioner was not named in the secret information and as per the allegations, he was found present in the house of Sadhu Singh, hence, it will be a matter of trial whether he was in conscious possession of the entire contraband recovered from the house of Sadhu Singh.

Learned counsel further submitted that even the Judge, Special Court, Mansa, in the order dated 03.05.2021, declining the bail on medical grounds, has observed that Medical Officer of Jail has supplied a status report, wherein the petitioner was stated to be HCV positive and that he was being sent to Civil Hospital, Mansa for treatment.

In reply, learned State counsel has opposed the prayer of the petitioners.

Learned State counsel has submitted that the investigation against petitioner Ved Parkash was conducted in a proper manner as after the name of the petitioner surfaced in the disclosure statement of other accused, by following a proper procedure, his premises were searched and recovery of a huge quantity of intoxicant tablets was effected.

Learned State counsel, on the basis of the affidavits of DSP, Sub Division Sardulgarh, District Mansa, dated 05.11.2020 and 11.06.2021, has argued that a proper procedure under Section 166(4) Cr.P.C. was followed as after obtaining search warrant from SDJM, Sardulgarh, IO/Inspector Bhupinder Singh along with other co-officials reached PS Kotwali, Delhi, from where SI Shelesh Sharma accompanied the police party and thereafter, recovery was effected and when the police party reached back, a DDR No. 36-B dated 26.03.2019 was recorded in PS Geeta Colony, New Delhi.

Learned State counsel further submitted that the total recovery effected from petitioner Ved Parkash is of 1,50,000 intoxicant tablets of 'Tramadol Hydrochloride', which is commercial quantity.

Learned State counsel, in reply to arguments raised on behalf of petitioner Pawan Kumar, submitted that the petitioner was nominated on the disclosure of co-accused, however, it could not be disputed that no recovery was ever effected from this petitioner, in pursuance to said disclosure. Learned State counsel could also not dispute that petitioner is not involved in any other case and as on day, he is in judicial custody for the last about 01 year, 10 months and 15 days.

Learned State counsel, in reply to arguments raised on behalf of petitioner Amit Chawla, on the basis of the aforesaid two affidavits of S.P.

(Investigation), has argued that during investigation, efforts were made to collect the call details of petitioner Amit Chawla with co-accused Sadhu Singh, Jaskaran Singh and Nirbhay Singh, however, the call details were relating to a period that was more than one year old and, therefore, as per guidelines of tele-communication service provider companies, the same cannot be collected. It is further submitted that with regard to CCTV footage also, it was found that the CD was recorded at Toll Plaza Ding as the original of the CCTV footage automatically stands deleted and the in CD, the faces could not be properly identified.

Learned State counsel, in reply to arguments raised on behalf of petitioner Jaskaran Singh, has submitted that he was named in the secret information as Rubbi Singh and was found at the house of Sadhu Singh, from where the recovery was effected.

Learned State counsel, on the basis of the affidavit of SSP, Mansa, has further submitted that as per investigation, the petitioner is also know as Rubbi Singh or Rupi. On the basis of the custody certificate, it is further submitted that petitioner is in judicial custody for the last about 01 year and 07 months and he is involved in one more FIR of 2013, however, his is on bail in that case.

In reply to arguments raised on behalf of petitioner Nirbhay Singh, learned State counsel, on the basis of the custody certificate, submitted that petitioner is in judicial custody for the last about 02 years, 02 months and 02 days and he is not involved in any other case. It could also not be disputed that he is a known case of Hepatitis C (HCV) and is undergoing treatment. However, it is submitted that petitioner was also found present at the spot when the recovery was effected.

In reply, learned senior counsel, appearing for petitioner Amit Chawla, has submitted that the police could not dispute that there is no call details of petitioner Amit Chawla with other co-accused showing that there was any meeting of mind or they were in touch with each other before the recovered was effected. It is also argued that CD set up by the petitioner in his defence is in fact of a Toll NH-9 and, therefore, it will be a matter of trial whether the petitioner was present at the spot or not as the CD will be proved by leading defence evidence.

At this stage, learned counsel, appearing for petitioner Ved Parkash, submits that he does not press the petition filed on behalf of petitioner Ved Parkash.

Accordingly, petition bearing **CRM-M-30945-2019**, is dismissed as not pressed.

After hearing learned counsel for the parties, I find that the recovery from three co-accused, who were stated to be present at the house of Sadhu Singh, i.e. Jaskaran Singh @ Rubbi, Nirbhay Singh and Amit Chawla, is of 10,000/10,500 intoxicant pills, whereas total recovery effected from co-accused Sadhu Singh, who was the owner in possession of the house, is of 2,34,000 intoxicant pills of 'Tramadol Hydrochloride'.

Considering the fact that petitioners are in judicial custody for about two years and out of 47 prosecution witnesses, only 03 witnesses have been examined so far and one of the moot points, to be decided during trial, is whether petitioners were having knowledge of storing such a huge quantity of intoxicant pills by co-accused Sadhu Singh and also in view of the fact that these three petitioners are not involved in any other case and they have raised a reasonable defence about their non-involvement in the

case as no recovery was effected from petitioner Pawan Kumar and petitioner Amit Chawla has raised a defence that he was not present at the spot and also the identity of petitioner Jaskaran Singh, who is named as Rubbi in the secret information, is yet to be established; and also considering the fact that petitioner Nirbhay Singh is suffering from Hepatitis C (HCV), I deem it appropriate to enlarge these petitioners on regular bail.

Accordingly, the petitions, filed by petitioners Pawan Kumar, Amit Chawla, Jaskaran Singh and Nirbhay Singh, are allowed and they are ordered to be released on regular bail, subject to their furnishing bail/local surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

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

27.07.2021

Waseem Ansari

**(ARVIND SINGH SANGWAN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No