

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-42374-2020 (O&M)
Date of Decision: 06.09.2021

Harpreet Singh @ Kala

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr.Prateek Pandit, 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. 203 dated 01.09.2019, under Section 21 and 29 of the N.D.P.S. Act, 1985 registered at Police Station Sultanpur Lodhi, District Kapurthala.

[2]. The petitioner was allegedly apprehended by the Police personnel attached to Police Station Sultanpur Lodhi, District Kapurthala on the aforesaid date of the FIR, and the contraband in the form of 1 Kg. 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 02 years and more following his apprehension on 01.09.2019.

[4] The prayer for bail has been opposed by the State, on whose behalf a reply was filed by way of affidavit of the Deputy Superintendent of Police, Sub-Division Sultanpur Lodhi, district Kapurthala, 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 (203) is seen to be already mentioned in the Recovery Memo (Annexure A-2) ostensibly prepared at the spot from where the petitioner was apprehended, which was 8 kilometers away from the concerned Police Station Sultanpur Lodhi where the FIR was drawn up only after ruqqa from the spot was sent through C Vinod Kumar 682/KPT, who was a member of the Patrolling Party headed by the SHO Inspector Sarabjit Singh, which had allegedly intercepted the black coloured Pulsar motorcycle by which he was travelling with a heavy bag with strings on his right shoulder, and which he allegedly throw away from his shoulder on the road on seeing the Police Party from a distance of about 20 yards, and had tried to cross the Naka, after which he was apprehended by the Police Party and on query pertaining to the heavy bag, which he had thrown from his shoulder, he first stated that the bag had accidentally fallen off and the same contains household articles. The Inspector/ SHO tried to associate a public witness but none agreed to join the Police Party after which in presence of the Patrolling Party again asked

what the Petitioner had thrown in the bag on seeing the Police Party. Then the Petitioner allegedly by walking in front of the Police Party reached the spot where he thrown the bag and picked the same with his right hand and opened and produced the same before the Inspector/SHO and stated that the same contained Heroin.

[6] 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.

[7] 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.

[8] However, in the present case perusal of the Recovery Memo (Annexure P-2) even in vernacular goes to show that it was prepared and signed by the Complainant/SHO Inspector Sarabjit Singh himself. The only two other signatories in the capacity of witnesses to the aforesaid Recovery happen to be ASI Paramjit Singh 386/KPL, and ASI Surjit Singh 1228/KPL, who were purportedly the members of the concerned Patrolling Party which allegedly apprehended the petitioner. In fact, there is absolutely no endorsement or even any mark on the entire document to indicate that the FIR number was subsequently endorsed upon the same at any stage after the

recovery memo had already been drawn up.

[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 shoulder bag being carried by him. But this contention raised 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 his shoulder bag with his right hand containing the contraband after having walked up the spot where he had thrown it, and produced the same before the Complainant/SHO stating that it contained heroin. When admittedly the recovery was effected after the petitioner had himself produced the alleged contraband after having picked up the same with his right hand, and opened it saying that it contained heroin, it would be altogether absurd to raise a contention that the recovery was made “from the ground” and not from the “right hand/person” of the petitioner.

[10] In any case, by now the Petitioner has already undergone imprisonment above two years following his arrest on 01.09.2021 and the trial is likely to take its own substantial time on account of the intervening delays which happened due to repeated outbreak of Covid-19 Pandemic.

[11] For the aforesaid reasons, without commenting any further on the merits of the case as a whole but in view of the apparently serious lapses noted in the matter of 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.

[12] 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.

06.09.2021

Satyawan

**(SUDIP AHLUWALIA)
JUDGE**

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