

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

CRM-M-48027-2021

Date of decision: November 29, 2021

Raja Singh

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

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

Mr. Joginder Pal Ratra, DAG, Punjab

ARVIND SINGH SANGWAN, J.

This is the second regular bail application filed by the petitioner, as the earlier one was dismissed as withdrawn on 15.9.2021.

The new ground for filing this petition is that the petitioner has undergone 02 years 06 months and 20 days of the total sentence and the trial is not proceeding.

Brief facts of the case as per the FIR are that ASI Harjinder Singh, along with other police officials, was on patrol duty for search of suspicious person and when he was coming from village Attari to Amritsar, a secret informer informed that petitioner-Raja Singh, along with Lovedeep Singh @ Deepu, Jajj Singh @ Doctor, Rajwinder Singh @ Raju and Gurdeep Singh have conspired with each other and are in the business of selling heroin and they are having connection with Pakisatani suppliers and supply heroin in Amritsar City. It was also informed that they are coming in

the persons are seen in Adda Attari and if barricading is done, they can be caught with heroin. ASI Harjinder Singh shared this information with SI Prabhjit Singh, who was also on patrol duty. The said information was recorded in writing by SI Prabhjit Singh and, thereafter, a ruqa was sent for registration of the case through Whatsapp and e-mail and the copy of the same was sent to HC Manpreet Singh to the Police Station at 08.20 p.m. on 1.5.2019 and, later on, FIR was registered at 21:46 hours. As per the further investigation, during the time when the barrier was laid, the aforesaid car was seen, in which two persons were coming. The car was intercepted and the person, who was driving the car, disclosed his name Raja Singh and co-accused Lovedeep Singh @ Deepu was sitting on the co-driver seat. Thereafter, notice under Section 50 of the NDPS Act (for short 'the Act') was given by SI Prabhjit Singh and DSP Pawanjit Singh was called at the spot. Thereafter, personal search of the petitioner and co-accused Lovedeep Singh @ Deepu was conducted and Rs.9,000/- was recovered from back pocket of his pant and Rs.3,000/- was recovered from Lovedeep Singh @ Deepu. From underneath the driver seat, a yellow cloth (parna) was recovered in which polythene packet was concealed and on weighment, it came to 01 kg. 10 gms. of heroin and the same was sealed with seals 'PS' and 'PJ'. Thereafter, DSP left the spot and the drug money was also recovered from the dash board of the car. Thereafter, by preparing the different memos, the car and the contraband were recovered and statement of public witness Sama Singh was recorded.

Counsel for the petitioner submits that on the next date, the case property along with the accused was presented before the Magistrate, where

two samples of 10 gms each were drawn and seal 'MKS' of the learned Judge and 'PS' of SI Prabhjit Singh was affixed on Form M29 and on 7.5.2019, the samples were sent to the FSL, Amritsar and on receiving the report from FSL, the challan was presented.

Counsel for the petitioner has argued that when the alleged information was shared by ASI Harjinder Singh with SI Prabhjit Singh, the statement of ASI Kashmir Singh, who was part of the police party, was recorded.

During the investigation ASI Harjinder Singh, when sent the information in term of Section 42 (2) of the NDPS Act to SI Prabhjit Singh, he made the following memo of information regarding commission of offence:-

"I, ASI Harjinder Singh No.1287/Tarn Taran, STF posted at Border Range, Amritsar. Today on dated 1.5.2019 at time around 7.30 p., I have received an information from secret informer that accused Raja Singh s/o Resham Singh r/o Village Rangarh, PS Gharinda, District Amritsar and Lovedeep Singh @ Deepu s/o Baldev Singh r/o Atari Ghati, presently residing at Baba Farid Nagar, Aashak Wali Gali, Ghanupur Kale, PS Cheharta, District Amritsar, who are selling herein in Amritsar District and also consumes it. This offence comes under the scope of NDPS Act. That this information is true, solid and reliable which is being recorded as per procedure.

Sd/-

Witness No.(2) ASI Kashmir Singh No.269/Amritsar Rural
STF Border Ranger Amritsar

Dated : 1.5.2019

Sd/-

ASI Harjinder Singh
No.1287/Tarn Taran

STF
Border Range Amritsar
Dated : 1.5.2019
Time : _____”

Counsel for the petitioner further submits that in the statement dated 1.5.2019 ASI Kashmir Singh stated before SI Prabhjit Singh (who recorded the statement) that when the police party was on patrol duty, a secret informer came to you (SI Prabhjit Singh) and informed that Raja Singh (petitioner), along with other four persons, are indulged in selling of heroin and they are coming in a car.

Counsel for the petitioner further argues that in the first hand information given by ASI Harjinder Singh, attested by ASI Kashmir Singh, two persons were nominated, i.e. petitioner Raja Singh and Lovedeep Singh @ Deepu and there was no vehicle number or the details as mentioned in the FIR was given, whereas ASI Kashmir Singh, while recording his statement before SI Prabhjit Singh has made drastic improvement by mentioning five names as well as giving the car number. Counsel further submits that this shows that a lot of improvement is made in the statement of ASI Kashmir Singh though the same was not stated by ASI Harjinder Singh. Counsel for the petitioner also submits that in the vernacular of the aforesaid memo got recorded by ASI Harjinder Singh, the complete details of FIR No.35 is given and the time, which was kept blank, was later on filled up as 7.30 p.m. Counsel for the petitioner submits that a perusal of the FIR show that it was registered at 21.46 hours and, therefore, about more than three hours prior to the registration of the FIR, its number was given in this document. The counsel has also referred to the other memos, like notice under Section 50 of

the Act, memo of non-consent memo as well as memo. of consent, recorded by SI Prabhjit Singh, complete details of FIR No.35 is given. Counsel for the petitioner submits that in the vernacular of these documents, somewhere FIR is mentioned by hand and on some places it is pre-typed as '35', which raises a suspicion about the manner in which the enquiry was conducted as it is the case of the petitioner that he has been falsely implicated .

Counsel for the petitioner further submitted that the presence of the DSP on the spot is also doubtful as he has only signed one document of memo of consent in which FIR number is clearly mentioned though this document was prepared much prior to the registration of the FIR. However, in the memo of recovery of drug money, which was prepared simultaneously while memo of recovery of heroin of 01 kg. 10 gms, DSP has not signed in the memo of recovery of the alleged drug money, which again raises a suspicion that these documents were got prepared later on and signatures of DSP were not taken at the spot. The counsel has next argued that the memo of recovery of the drug money, heroin as well as car are, in fact, joint recovery memo. and, therefore, it will be a matter of trial whether a proper procedure has been followed or not. Counsel for the petitioner further submits that the procedure followed by the Investigating Officer in preparation of three joint recovery memo. of money, drug and vehicle are defective and not in accordance with law.

It is next argued by the counsel for the petitioner that in all these documents, which are typed documents, somewhere the name of Baljit Singh is mentioned as hand written and in some documents it is typed,

which shows that the same were not prepared at the spot and were prepared later on.

Counsel for the petitioner submits that even on the personal search memo of the petitioner, instead of mentioning the name of petitioner Raja Singh, the name of Lovedeep Singh @ Deepu is mentioned and his signatures are taken, though it is stated to be a recovery memo relating to the petitioner. The counsel has drawn the attention to the vernacular of this document to support his argument.

Counsel for the petitioner next argued that in the memo of preparing the sample seal, which was also prepared at the spot on 1.5.2019, the seal of the Illaqua Magistrate 'MKS' is also there and there is no explanation as to how this has come on a document which was prepared at the spot when the investigation was going on. The counsel has then referred to the order passed by Shri Mukesh Kumar Singla, JMIC/Duty Magistrate, Amritsar, which reads as under :-

“In order to draw representative sample, parcel containing case property i.e. 1.10 kgs. of heroin has been opened in my presence after breaking open the seal and out of which to samples 10/10 gms each of heroin have taken out and put it separate tiny plastic containers which have been sealed with the seal of undersigned MKS and Investigating Officer PS. I have initialed over the parcels.

It is certified that case property produced before the Court for inspection is correct as per the inventory prepared by the Investigating Officer SI Prabhjit Singh After initialing the same, the case property along with sample parcels, sample seal and Form M-29 handed over to SI Prabhjit Singh. One sample parcel be deposited in the office of FSL, for its chemical analysis and remaining

case property be deposited in Judicial Malkhana, Amritsar.

Heard on the another application moved by the police officer for seeking police remand of the accused. It has been argued by the learned APP for the State that the offence in the present FIR serious in nature and I order to determining the source of origin of the contraband allegedly recovered from the accused. The interrogation of the accused is required.

However, on the other hand the learned defence counsel has opposed of police remand on the ground that no custodial interrogation of the accused required.

I have heard the learned APP for the State, learned defence counsel and pursued record. The allegations against accused are serious in nature. Keeping in view the gravity of the offence as well as in order facilitate the investigation all the accused are hereby remanded police custody for three days, i.e. 5.5.2019, subject to medical examination. Accused be also produced on the date fixed. Papers be sent to the Court concerned.

Sd/-

Dated : 2.5.2019

(Mukesh Kumar Singla)
Judicial Magistrate 1st Class
Amritsar (Duty)"

Counsel for the petitioner has submitted as per the aforesaid order the petitioner was produced before the Magistrate on the next day, i.e. 2.5.2019 and in the memo it is mentioned that the seals are having impressions 'PS', 'PJ', 'HS' and 'MKS', thus, the memo of preparation of seals, the seal of the Magistrate is also there and again it will be a matter of trial as to how the seal is affixed on the document, which was prepared at the spot. Again reference is given to the vernacular of this document which is part of the challan report.

Counsel for the petitioner submits that the learned Duty Magistrate has drawn two samples of 10/10 gms. each of heroin and the same were put in a small plastic container and were sealed with the seal of 'MKS' (Duty Magistrate) and 'PS' Prabhjit Singh (Investigating Officer) and in the order it is specifically mentioned that the Duty Magistrate has put his signatures on the parcel. It is also stated that the case property along with sample parcel, sample seal and Form No.M29 prepared in the Court were handed over to SI Prabhjit Singh with a direction that one sample be deposited with the FSL and the remaining be deposited in the Judicial Malkhana, Amritsar. Counsel for the petitioner then referred to the report dated 27.5.2019 of the FSL to submit that sample which was drawn before Duty Magistrate on 2.5.2019 was handed over to FSL on 7.5.2019 after five days and at serial No.6 giving description of articles received, it is stated "one parcel sealed with two seals, one each of "MKS" and again "PS" alleged to contain heroin. Seals on the parcel were found intact and tallied with the specimen seal impressions. Counsel for the petitioner submits that the perusal of the order dated 2.5.2019 passed by the Duty Magistrate shows that he has put his signatures on the parcels, however, this fact is not mentioned in the report of the FSL as there is reference of only two seals. The counsel further submits that the sample was sent after five days, there is every possibility of tempering with the same as in the FSL report, it is nowhere mentioned that the Magistrate has put his signatures on the sample parcel received by FSL.

It is next argued that the petitioner is in long custody, i.e. 02 years 06 months and 20 days and out of the 12 prosecution witnesses, none

has been examined though the challan stands presented on 8.10.2019 and a period of two years has elapsed since then.

Counsel for the petitioner has referred to the judgment of Hon'ble the Supreme Court in SLP (Crl.) No.22749 of 2020 Union of India Vs. Abbu Thahir B @ Abdu, to submit that the Hon'ble Supreme Court has uphold an order granting bail by the High Court on account of non-compliance of Section 42 of the Act. Reliance has also been placed on order passed by the Hon'ble Supreme Court in SLP (Crl.) No.4712 of 2020, Manoj Kumar Sigh Vs. The State of West Bengal and another to submit that even in case of heavy recovery of 9310 kgs. of Ganja, considering the long custody, the bail was granted.

Counsel for the petitioner has made another reference to order passed in Criminal Appeal No.668 of 2020 arising out of SLP (Crl.) No.3813 of 2020 Amit Singh Moni Vs. State of Himachal Pradesh, vide which the Hon'ble Supreme Court considering the custody of 02 years and 07 months has granted the concession of regular bail, though the recovery was above 03 kgs. of Charas.

The counsel has lastly argued that at the time when the first bail application was withdrawn, the petitioner was not having the complete details of his involvement in the other cases. Counsel for the petitioner submits that the details of the other pending cases are given in paragraph (vii) of the petition. The petitioner was nominated on the disclosure of other accused and no recovery was effected in FIR No.21 dated 30.4.2019, under Sections 21/29 of the NDPS Act, registered at Police Station Taragarh, District Pathankot; FIR No.219 dated 15.10.2018 under Sections 22/29 of

the NDPS Act, registered at Police Station Chheharta, Amritsar; FIR No.72 dated 9.4.2019 under Section 21 of the NDPS Act, registered at Police Station Islamabad, Amritsar; FIR No.184 dated 18.8.2018 under Sections 21/22/25/29/61/85 of the NDPS Act, 1985, registered at Police Station Chheharta, Amritsar; FIR No. 180 dated 22.2.2015 under Sections 21 NDPS Act, registered at Police Station Gharinda, Amritsar; It is further stated that in another FIR No.10 dated 13.1.2017 under Sections 21/22 of the NDPS Act, registered at Police Station Gharinda, Amritsar, the petitioner was granted bail as it was a case of recovery of fake heroin as per the report the FSL and in FIR No.180, the recovery was 5.5 gms. for which he was sentenced to 01 months and has already undergone the sentence.

Counsel for the petitioner, thus, submits that petitioner be granted the concession of regular bail.

In reply, the learned State counsel has submitted that as per the statement of ASI Kashmir Singh, 05 persons were nominated in the FIR by giving details of the car number. The learned State counsel further submits that the statement was recorded by SI Prabhjit Singh, as ASI Harjinder Singh has vide a memo attested by ASI Kashmir Singh has shared the said information with SI Prabhjit Singh. The learned State counsel has next referred to the report under Section 173 Cr.P.C. to submit that on receiving the information, SI Prabhjit Singh has sent the information to the Police Station by sending a ruqa and requested that the case number be informed and that is why FIR No.35 was registered, the same was typed in the different recovery memos.

Counsel for the petitioner submits that after giving a notice under Section 50 of the Act, DSP was called at the spot and personal search of both the accused, petitioner Raja Singh and Lovedeep Singh @ Deepu were effected and then in the search of the car, the heroin was recovered underneath the driving seat and then drug money was also recovered from the dash board of the car. Counsel for the petitioner further submits that the DSP has signed the recovery memo of the heroin as it is mentioned in the investigation that thereafter he left the spot. Counsel has further submitted that the provisions of Section 42 of the Act will not attract in this case as Section 43 of the Act is applicable.

The learned State counsel has further argued that since the first application was withdrawn in view of the fact that the petitioner is involved in some other FIRs under the NDPS Act, there is no change of circumstances. However, the learned State counsel has submitted that one of the co-accused Jagbir Singh @ Doctor is granted the concession of regular bail vide order dated 25.8.2020 in CRM-M-17915 of 2020. It is also stated that another accused Rajwinder Singh @ Raju is also granted the concession of regular bail vide order dated 1.7.2020 in CRM-M-12591 of 2020 and one accused Gurdeep Singh also granted the concession of anticipatory bail vide order dated 20.9.2010 in CRM-M-29238 of 2019.

The learned State counsel has referred to the judgment of the Hon'ble Supreme Court in Karnail Singh Vs. State of Haryana, 2009(5) RCR (Criminal) 515, to submit that the Hon'ble Supreme Court has held that total non-compliance of Section 42 of the Act is impermissible,

however, delayed compliance with satisfactory explanation will be acceptable in compliance of Section 42 of the Act.

Counsel for the petitioner submits that in this case by sending a ruqa the information was given to the police, and, therefore, there is a proper compliance of Section 42 of the Act. Counsel has further submitted that it is held by the Hon'ble Supreme Court in State of Punjab Vs. Baljinder and another, 2020(1) RCR (Crl.) 58, that compliance of Section 50 of the NDPS Act is required where the personal search of the accused is result into recovery of any contraband, however, the same is not required where the search of the vehicle and recovery of contraband pursuance thereto is effected.

After hearing counsel for the parties, I find merit in the present petition on the following grounds :-

- (i) Though this is the second petition, the earlier one was dismissed as withdrawn on account of involvement of the petitioner in other cases, however, the petitioner has explained that in 04 cases he was nominated on the disclosure as no recovery was effected and in one case he was involved in recovery of fake heroin. This information was not available with the petitioner at the time of filing of the first petition, which is now produced before the Court.
- (ii) Another ground for considering the second bail application is that the petitioner is in custody for 02 years 06 months and 20 days; the challan was

presented on 8.10.2019 and till date not even a single prosecution witness has been recorded. One of the reason for delay in trial is though COVID-19 situation, however, nothing is brought on record by the learned State counsel that the prosecution witnesses were ever summoned or not recorded due to any fault of the petitioner or any other accused.

(iii) There is a variance in the memo of information supplied by ASI Harjinder Singh to SI Prabhjit Singh attested by ASI Kashmir, wherein it is stated that secret informer has given information regarding two persons but in the statement of ASI Kashmir Singh, which was recorded at the same time, 05 persons are nominated along with the description of the Verna car No.PB-11-BA-0090, which is not there in the memo of information, which is the first document recorded by ASI Harjinder Singh, who had received the secret information and, therefore, it will be a matter of trial as to how the prosecution meet out the same regarding the variation in the statement.

(iv) The memo recorded by ASI Harjinder Singh under Section 42 (2) of the NDPS Act is not addressed to any senior officer and as per the statement of ASI Kashmir Singh recorded under Section 161 Cr.P.C., the same was given to SI Prabhjit Singh, who was the

second Investigating Officer. Therefore, again it will be a matter of trial whether the proper compliance of Section 42 of the Act has been made or not?

- (v) As per the ruqa sent to the Police Station, the time is shown as 7.30 p.m. when the petitioner and co-accused Lovedeep Singh @ Deepu were apprehended by the police and the FIR was registered on 21.46 hours. In the intervening period, before registration of the FIR, its number i.e. FIR No.35 is mentioned in all the documents, i.e. notice under Section 50 of the Act, which is given prior to the personal search/search of the car, memo of non-consent, memo of consent, memo of recovery of drug money of Rs. One Lac, memo of recovery of 1 kg.10 gms of heroin, memo of taking possession of the car and preparation of the sample seal. The vernacular of all these documents, show that in some of the documents, which are typed memo number is also typed and in some cases, it is mentioned in handwriting with pen, including the time. Therefore, the prosecution is to explain while recording the evidence as to how this FIR number is mentioned.

- (vi) Surprisingly, in the memo of recovery of petitioner Raja Singh, on personal search, name of co-accused Lovedeep Singh @ Deepu is mentioned and his

signatures are taken. Moreover, in the other memos of recovery of heroin, car and drug money as well as memo of consent, joint signatures of both the accused Raja Singh and Lovedeep Singh @ Deepu are taken and, therefore, it will be matter of trial whether they were given proper opportunity to understand the contents of the memos separately or not.

(vii) The memo of preparing the sample seal, which was prepared at the spot find the seal of the Duty Magistrate (MKS) (Shri Mukesh Kumar Singla). However there is no endorsement of signatures on the same. Since this document was prepared at the spot, it could not be explained by the learned State counsel how the seal has come on this document as the petitioner was produced before the Duty Magistrate on the next date, i.e. 2.5.2019 and in the order passed by the JMIC, Amritsar it is nowhere mentioned that he has put his seal on this memo rather, the order speaks about putting his signatures on the sample drawn in presence of the Magistrate with his seal 'MKS' and the seals of the Investigating Officer 'PS'. Again it has to be explained by the prosecution while leading the evidence.

(xiii) Though the sample was handed over to the Investigating Officer by the Duty Magistrate

on 2.5.2019 was however sent to the FSL after five days on 7.5.2019 and as noticed above, in the column of article received it is mentioned that one parcel, sealed with two seals, one each of 'MKS' (Duty Magistrate) and 'PS' (Investigating Officer) alleged to have contained herein is there, there is no mention that the signature of the Duty Magistrate are there.

- (ix) The fact that the seal of the Magistrate was imposed by the Investigating Officer even on the memo of sample seal, which was prepared at the spot, raises a suspicion about the samples sent to the FSL wherein, there is no mention that the sample parcel contains the signatures of the Duty Magistrate and, therefore, it will be matter of evidence for the prosecution to explain this fact.
- (x) There is no dispute with regard to the judgment relied upon by the learned State counsel in Karnail Singh's case (supra), however, the compliance of Section 42 of of the Act in this case is to be seen during the trial as there is variance in the memo prepared by ASI Harjinder Singh, who stated that he got information about two accused without there being a reference to a car, whereas in the statement of ASI Kashmir Singh, who is an attesting witnesses to the aforesaid memo prepared by ASI Harjinder Singh, in his statement

under Section 161 Cr.P.C. has made improvement to submit that on secret information there are five persons by giving the car number.

(xi) Again there is no dispute with regard to the judgment of Hon'ble the Supreme Court Baljinder Singh's case (supra) that the mandate of Section 50 of the Act is confined to personal search only and not the recovery from vehicle. However, the counsel for the petitioner has not raised any argument in this regard that there is any violation of Section 50 of the Act.

(xii) All above points are sufficient to dispel the mandate of Section 37 of the Act.

In view of the above, considering the long custody of the petitioner, i.e. 02 years 06 months and 20 days, and the fact that the challan was presented in 8.10.2019 and despite a lapse of two years, out of 12 witnesses not even a single witness has been examined, this petition is allowed and the petitioner is directed to be released on bail, subject to his furnishing bail/surety bonds to the satisfaction of the Chief Judicial Magistrate/Duty Magistrate concerned.

(ARVIND SINGH SANGWAN)
JUDGE

November 29, 2021
satish

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No