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

**CRM-M-1895-2022
Date of Decision: 20.09.2022**

Jaswinder Singh

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Bipan Ghai, Senior Advocate assisted by
Mr. Umesh Aggarwal, Advocate &
Mr. Prahdeep Singh Bindra, Advocate,
for the petitioner.

Mr. Amit Rana, Sr. DAG, Punjab.

JASGURPREET SINGH PURI, J. (ORAL)

The present petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case bearing FIR No.116 dated 25.06.2020, under Section 22 of the N.D.P.S. Act, 1985, registered at Police Station City Moga, District Moga.

It has been submitted by learned Senior Counsel for the petitioner that the petitioner is in custody since 25.06.2020, which is almost 2 years and 3 months. He further submitted that 4 witnesses have already been examined out of the total 15 cited witnesses. He also submitted that the trial of the case is going at very slow pace and the petitioner has faced incarceration for 2 years and 3 months. He further submitted that it is a case where the petitioner is not involved in any other case and is having clean

antecedents and was falsely implicated in the present case and 22,500 tablets of *Tramadol* have been planted upon the petitioner and the other accused by alleging that the police party received a secret information then a *Naka* was laid and three persons were apprehended along with the aforesaid tablets. He also submitted that in fact as per the FIR which is dated 25.06.2020, the time of occurrence has been shown to be as 17.20 to 17.50 hrs. and the FIR was registered at 19.00 hrs. He further submitted that in fact it was around 3.00-3.30 p.m. when the petitioner was picked up from his house by the SHO of the Police Station, namely, Kikkar Singh along with ASI Tarsem Singh and Constable Gurjeet Singh. He also submitted that the aforesaid ASI Tarsem Singh, the person who is stated to be a part of the police party as per the FIR itself where the location of the aforesaid ASI Tarsem Singh was coming at different places but the location is coming of the same tower where the petitioner's house is situated but a camouflage has been created by the police while stating that since it is a thickly populated area, it cannot be said that the aforesaid Tarsem Singh was at the place where the petitioner's house is situated. He referred to Page No.20 of the affidavit filed by the State in this regard. He further submitted that although in the affidavit filed by the State wherein it is stated that an inquiry was conducted by the Superintendent of Police and it was found that the petitioner was not illegally picked up by the aforesaid persons i.e. SHO Kikkar Singh, ASI Tarsem Singh and Constable Gurjeet Singh, but the facts of the case suggest otherwise. Another justification which has been stated in the affidavit was that the SHO Kikkar Singh, ASI Tarsem Singh and Constable Gurjeet Singh were roaming in the locality for tracing the bad

elements whereas in fact the petitioner was picked up from his house at 3.30 p.m. and a Scorpio Car was also seen in the photographs which has been attached as Annexures P-2 & P-3 and this Scorpio Car belongs to SHO Kikkar Singh. He also submitted that now a wrongful explanation has been given by the police in the affidavit that SHO was supposed to go to all the places of the territory and he was passing through that place but the story given by the police is totally wrong whereas the true factual position was that the petitioner was picked up from his house much prior to the alleged time of occurrence as stated in the FIR.

Learned Senior Counsel has further submitted that his arguments are supported from another important glaring fact. He also submitted that even in the affidavit, it has been repeatedly stated that since the alleged confiscation was in the presence of a Gazetted Officer, who was a DSP, namely, Jangjit Singh, and therefore, the story of the police cannot be falsified. The stand taken by the State is totally negated from the fact that the aforesaid DSP Jangjit Singh is also involved in another case where he falsely implicated some of the accused in another case. The learned Senior Counsel has referred to an order passed by this Court in ***CRM-M-9434-2022*** titled as “***Aman Kumar @ Aman Sharma and another Vs. State of Punjab***” wherein two petitions were filed by the aforesaid Aman Kumar @ Aman Sharma, one was for grant of regular bail and second was for quashing of the FIR on the ground of false implication and in the affidavit which was filed after thorough scrutiny by the SSP in the aforesaid case, it was specifically stated by the SSP that the aforesaid Jangjit Singh, DSP, was not at the place of occurrence and in view of the affidavit filed by the SSP,

this Court granted bail to the aforesaid Aman Kumar @ Aman Sharma on the ground of false implication. He also submitted that in the present case also the aforesaid Jangjit Singh was not present at all and it was all concocted story made by the police in order to implicate the petitioner. He further submitted that Section 50 of the NDPS Act provides for the safeguards by calling a Gazetted Officer on the spot and the Gazetted Officer, who has been called at the spot in the present case is himself doubtful which has been so stated by the SSP himself in the aforesaid case of Aman Kumar @ Aman Sharma. As per the FIR in the present case, the petitioner was got searched in the presence of the aforesaid Jangjit Singh, who has falsely implicated the present petitioner in the present case and regarding which, he has a earlier history also of false implication as aforesaid in Aman Kumar @ Aman Sharma's case. He further submitted that considering the custody of the petitioner and the aforesaid facts and circumstances of the case, the bar contained under Section 37 of the NDPS Act will not apply in the present case, and therefore, the petitioner may be considered for the grant of regular bail.

On the other hand, Mr. Amit Rana, learned Senior Deputy Advocate General, Punjab, has submitted that so far as the aforesaid Jangjit Singh is concerned, it is a matter of record that in ***CRM-M-9434-2022*** titled as “***Aman Kumar @ Aman Sharma and another Vs. State of Punjab***” and in ***CRM-M-5428-2022*** titled as “***Aman Kumar @ Aman Sharma and another Vs. State of Punjab***” wherein quashing of the FIR was sought, the SSP himself filed an affidavit in which it was stated that the aforesaid Jangjit Singh was not present at the spot and rather disciplinary action has

already been taken against the aforesaid Jangjit Singh. He further submitted that in the present case, however, it was found in the inquiry that it was not a case of false implication. He also submitted that so far as the custody of the petitioner is concerned, it is correct that he is in custody from 2 years and 3 months and it is also correct that the petitioner is not involved in any other case and has got clean antecedents.

I have heard the learned counsel for the parties.

The petitioner has faced incarceration for about 2 years and 3 months and he is not involved in any other case as per the learned counsel for the parties. 4 witnesses have already been examined. Since the alleged confiscation involves commercial quantity, this Court has to consider the prayer of the petitioner in the light of Section 37 of the NDPS Act as well. Section 50 of the NDPS Act provides for adequate safeguards so that no person should be falsely implicated in any case and in any manner whatsoever, and therefore, right is granted to the accused to exercise the option for getting searched in the presence of a Gazetted Officer or a Magistrate. In the present case, as per the FIR, the petitioner had given a non-consent memo and therefore, one DSP, namely, Jangjit Singh was called on the spot. The petitioner is alleging false implication in the present case. The role of the aforesaid Jangjit Singh, DSP, came up for consideration before this Court in CRM-M-9434-2022 and CRM-M-5428-2022 wherein, the petitioner of that case had filed one petition for grant of regular bail and another one for quashing of the FIR. This Court had directed the SSP to file an affidavit in that case and the SSP after thorough inquiry came to the conclusion that the place of occurrence has been

changed by the police party and there is procedural lapse on the part of the police party and therefore, Departmental Inquiry was recommended against Jangjit Singh, DSP and the other officers. Para 20 of the affidavit filed by the SSP, Moga in CRM-M-5428-2022 is reproduced as under:-

“20. That, it is respectfully submitted that, however it has been found that the recovery made in the present FIR is genuine and no evidence has come on record to show that the said recovery is manipulated or planted. However, on analyzing the call details it has been found that the place of occurrence has been changed by the police party and there is a procedural lapse on the part of the police party present at the Naka and therefore, a Departmental Enquiry is being recommended against Jangjit Singh, Deputy Superintendent of Police, to the Senior Officers and Departmental Enquiry of ASI Malkeet Singh, ASI Varinder Singh, LR ASI Baljinder Singh, C-II Harjinder Singh, C-II Gurjit Singh, C-II Gurbhej Singh and C Dilbagh Singh has been initiated.”

This Court is of the view that once the DSP, who is stated to be called on the spot himself is under scanner and disciplinary proceedings have now been initiated against him in aforesaid case, the allegations of false implication of the petitioner cannot be ignored and therefore, this Court is *prima facie* of the view that at least at this stage, there are reasons to believe that the petitioner is not guilty of the offence. Apart from the same, the petitioner is not involved in any other case and it is not the case of the State counsel nor it has been so specifically stated anywhere in the affidavit that in case the petitioner is released on bail then he may repeat the offence or may abscond or flee from justice or may influence any witness.

So far as the second ingredient for making a departure from the bar contained under Section 37 of the NDPS Act is concerned, the same also remains satisfied. Therefore, both the ingredients for making a departure from the bar contained under Section 37 of the N.D.P.S. Act remain satisfied and therefore, at this stage the bar contained under Section 37 of the N.D.P.S. Act will not apply to the petitioner.

In view of the aforesaid position, this Court is of the view that it will be just and proper to grant the concession of regular bail to the petitioner. Consequently, the present petition is allowed and the petitioner is ordered to be released on bail on furnishing bail bond/surety bond to the satisfaction of the trial Court/Duty Magistrate concerned, if not required in any other case.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is only meant for the purpose of decision of present petition.

20.09.2022*Bhumika***(JASGURPREET SINGH PURI)
JUDGE**

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