

CRM-M No.3814 of 2022 (O&M)

1

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

**CRM-M No.3814 of 2022 (O&M)  
Date of decision: 03.02.2022**

Mandeep Singh

....Petitioner

Versus

State of Punjab

....Respondent

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

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

Mr. H.S. Sullar, DAG, Punjab.

**ARVIND SINGH SANGWAN J. (Oral)**

Prayer in this petition is for grant of regular bail to the petitioner under Section 439 of the Code of Criminal Procedure (in short 'Cr.P.C.') in FIR No.28 dated 12.02.2021, registered under Sections 21 and 23 of the NDPS Act, at Police Station Gharinda, District Amritsar.

Counsel for the petitioner has submitted that as per the allegations in the FIR, registered at the instance of Sunil Kumar, Company Commander COY COMDR D COY JCP Attari Bn. BSF No.3306/Firing Inch-Seizure Heroin/Indian/D/88/2021/86, it is stated that on 11.02.2021 at about 07:00 Hrs. Ops Sukha/Khura checking party led by SI Anuj Kumar along with 06 other persons left BOP JCP Attari Unit to carry out operations for checking ahead of fence in AOR

of the BOP. At about 08:20 Hrs. SI Anuj Kumar noticed suspicious movement of 02 persons towards Indian side, who were hiding in suspicious manner in close proximity of the border security fence in the alignment of BP No.101/11 and simultaneously, heard suspicious noise ahead of fence (merely 15 meters from fence on India side) of cocking of gun. SI Anuj Kumar, finding threat to his life, opened a burst of 03 rounds from his gun and in the meantime, the suspects tried to flee. They were chased by SI Anuj Kumar in the wheat fields amidst the dense fog and saw that one of the suspect was carrying a white sack. Thereafter, about 800 mtr. behind fence (India side) SI Anuj Kumar overpowered one of the suspect, who was carrying a white colour sack, however, he left the bag while fleeing somewhere and found that his left shoulder was bleeding. Noticing that he has sustained bullet injury, on his left shoulder, the injured, who was identified as Mandeep Singh son of Darshan Singh (petitioner herein) was evacuated to BSF Hospital at JCP Attari, however, he was referred to GNDU Hospital, Amritsar in BSF Ambulance. The other suspected persons could not be apprehended due to dense fog in the wheat fields. It is further stated in the later part of the FIR that thereafter, the whole area was searched with the help of available security apparatus and during the search, a white colour bag (which was being carried out by the injured person) was found in the wheat fields about 150 mtrs away from the place of incident (where the injured person was apprehended) and about 800 mtrs from fence and about 01 Km from I.B. at about 14:30 Hrs. On opening the bag, 10 packets wrapped in yellow colour tape, weighing

10.710 Kgs, suspected Heroin was recovered. It is further stated that human footprints of 2/3 persons were also noticed.

Counsel for the petitioner has further submitted that there is a variation in the statement given by SI Anuj Kumar on 12.02.2021 (Annexure P6), with the Commander of BSF wherein he has stated that after he apprehended the petitioner – Mandeep Singh, he recovered a heavy weight sack from him, from which 10 packets of Heroin were recovered. It is further submitted that the version given by SI Anuj Kumar is that the sack was recovered from the petitioner himself at the time, when he was apprehended in an injured condition, however neither any blood-mark was seen on the sack nor in the investigation, it has come that any scientific investigation was carried out to find out, if any blood stains were there on sack when the petitioner was fleeing carrying it. Even no weapon is recovered though FIR states, SI Anuj Kumar heard cocking of a weapon and even no trace of any evidence were collected.

Counsel for the petitioner has further submitted that the petitioner is an agriculturist having no criminal background of involvement in any case of narcotics and has relied upon the affidavit dated 20.03.2020 of one Surjit, who has given the land on lease to the father of the petitioner against payment of lease money.

Counsel for the petitioner has also submitted that since the petitioner was at his fields for the agricultural purposes and he got injured by the firing of BSF, the actual culprits ran away and since the petitioner was seriously injured, in order to save the skin, the BSF has

involved the petitioner falsely in this case, though he is an agriculturist and was having land nearby the place of incident.

Counsel for the petitioner has further argued that even the map of demarcation prepared by SI Anuj Kumar reflects that at the place Mark D, he has recovered one sack with 10 packets from the petitioner, which is again in variation with the FIR version.

Counsel for the petitioner has, next argued that in the seizure memo, which was prepared at the spot, SI Anuj Kumar has not signed and it is Sunil Kumar, Company Commander along with 03 other BSF officials, who have signed the same, which show that the version given in the FIR that the narcotics were recovered after 05 hours, after the petitioner was apprehended and was taken to hospital is correct version whereas the version given by SI Anuj Kumar that he has apprehended the petitioner along with a white sack, does not seems to be correct as SI Anuj Kumar, has not signed the seizure memo because the recovery was not effected by him.

Counsel for the petitioner has, thus, submitted that the investigation is complete, the report under Section 173 Cr.P.C., has already been submitted and no one except the present petitioner was arrested, despite the fact that it has come in the investigation that the footprints of 2/3 persons were seen and the actual culprits were never arrested. It is also argued that even during the custodial interrogation of the petitioner, nothing has come that anyone was accompanying him as he was alone for taking care of his agricultural land as in ordinary course, if any other culprit was there, it would have come in the

disclosure statement of the petitioner that he was accompanied by any other person.

Counsel for the petitioner has, thus, submitted that all these points can be ascertained, after leading the evidence and considering the fact that the petitioner is the first offender and he is in custody for the last about 01 year and the conclusion of the trial will take some time, the petitioner be granted the concession of bail.

Counsel for the State, in reply, has argued that there is no variation in the FIR version and the statement given by SI Anuj Kumar, however on a Court query, he could not dispute that no blood-stains or marks were seen on the sacks, which was recovered from the petitioner as it is the version of SI Anuj Kumar that the petitioner was carrying the sack along with him and was bleeding. It is also not disputed that in the recovery/seizure memo, SI Anuj Kumar has not signed and the same is signed by the first informant i.e. Sunil Kumar, Company Commander along with 03 other BSF officials. It is also not disputed that no weapon was recovered.

After hearing the counsel for the parties, without commenting anything on merits of the case, I find merit in the case on the following grounds:-

***(a) As per the FIR version registered at the instance of Sunil Kumar, Company Commander, SI Anuj Kumar suspecting the movement of 02 persons and hearing a cocking of a weapon opened burst of 03 rounds from his gun and suspect tried to flee. It is***

*further stated in the FIR that the petitioner was injured with the gun-shot on his shoulder when SI Anuj Kumar over-powered him. There are 02 versions subsequent to that in the FIR, it is stated when SI Anuj Kumar over-powered one of the suspect, he was carrying a white colour sack, however, he left the bag while fleeing somewhere and was found bleeding from his left shoulder.*

*The second version as per the FIR is that after about 05 hours, when a search was conducted with the help of other officials, a white colour bag, which was allegedly carried out by the injured person was recovered about 150 meters away from the place of incident, therefore, there is a variation in the 02 versions as SI Anuj Kumar stated in his statement under Section 161 Cr.P.C. that he apprehended the petitioner along with the bag while he was injured with gun-shot injury on his left shoulder and as per the FIR version, the recovery was effected after about 05 hours.*

*(b) As per SI Anuj Kumar, he recovered the sack while he over-powered petitioner but in FIR, it is stated that sack was recovered after 05 hours. The seizure/recovery memo is not signed by SI Anuj Kumar which negates his version and rather it is signed by Sunil Kumar, Company Commander BSF and 03 other*

*officials which support FIR version that sack was recovered later on.*

*(c) The report under Section 173 Cr.P.C., is silent about any blood mark on the sack recovered, though, SI Anuj Kumar has stated that the petitioner despite being injured was carrying it.*

*(d) As per the prosecution, SI Anuj Kumar heard the sound of cocking of a weapon, however, no weapon was recovered, at the spot.*

*(e) It is further the case of the prosecution that the foot marks of 2-3 persons were seen, however, neither the same are reflected in the site plan to show the distance from the place marked 'D' in site plan where the petitioner was arrested nor any scientific investigation was conducted to match the footprints (with the shoe of the petitioner, which the petitioner was wearing) to find out whether he was along with other persons.*

*(f) Though specific time is given in the FIR about the suspicious movement of 02 persons, however again, no scientific investigation was conducted to find out from the tower location of the area, if any mobile/phone was used for making international call to Pakistan, so as to identify the other accused persons, rather it is case of the prosecution that no other person was arrested, which again raises a suspicion about the*

*manner, in which the investigation is conducted.*

*(g) The petitioner has set up a probable defence that because he and his father are agriculturist and his father has taken the land on lease and therefore, the petitioner was present in his fields when the BSF opened the fire.*

*It is further defence of the petitioner that in fact the actual culprits were never arrested and since the petitioner was injured with the gun-shot injury in order to save the skin, the BSF officials nominated him as an accused, though, there are many discrepancies in the investigation itself.*

*(h) The defence of the petitioner about false implication can also be looked into with the circumstance that after the arrest of the petitioner, in his disclosure statement, nothing has come that he, being in conspiracy with any other person, was bringing the narcotics. In ordinary course, if one accused is accompanied by the other, the same comes in the disclosure of the person so arrested.*

*(i) The manner in which the investigation is conducted by not trying to locate the other accused persons also raises a suspicion that the actual culprits were never arrested for the reasons best known to the Investigating Officer.*

***(j) The petitioner is in custody for the last 01 year; he is a young person, having no criminal background of involvement in any other or similar case under the NDPS Act.***

In view of the above, the present petition is allowed and the petitioner is directed to be released on regular bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaqa Magistrate/Duty Magistrate.

However, it will be open for the prosecution to apply for cancellation of bail of the petitioner, in case he is found involved in any other case or misusing the concession of bail, in any manner.

**(ARVIND SINGH SANGWAN)  
JUDGE**

**03.02.2022**

*yakub*

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No