

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

CRM-M-5366-2021 (O&M)

Date of decision : March 10, 2022

Joginder Singh @ Jagga

....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.

Prayer in this petition is for grant of regular bail to the petitioner in FIR No.199 dated 10.10.2020 under Sections 21 and 29 of the NDPS Act, registered at Police Station Sadar Batala, District Batala.

Counsel for the petitioner submits that as per the allegations in the FIR, registered at the instance of ASI Vijay Kumar, it is stated that on 10.10.2020, while on patrol duty, he received a secret information that petitioner-Joginder Singh @ Jagga, a former Sarpanch of the village is indulged in the business of selling of heroine and is keeping the same in his house and if a raid is conducted, heroine can be recovered. On the basis of the same, a ruqa was sent to the Police Station and the FIR was registered at 2.20 a.m.

Counsel for the petitioner has submitted that it is further the case of the prosecution that after registration of the FIR, an information was sent to Balbir Singh, DSP, Sub Division Fatehgarh Churian, who reached at the spot for conducting a raid at the house of the petitioner. When the DSP reached at the spot, outside the house of the petitioner a person was nabbed, who informed his name as Sarwan Singh son of Shingara Singh. He was taken into custody on the basis of suspicion. The petitioner was found in the lobby of the house and was apprehended. The DSP gave him a notice to be searched before a Gazetted Officer or a Magistrate, who can be called at the spot or he could be taken before him. On this, the petitioner reposed faith on the DSP to conduct the search. Thereafter, on personal search of the petitioner, one polythene of black colour containing 250 grams of heroine along with Indian currency was recovered. The recovery was sealed by following the proper procedure. One mobile was also recovered in the personal searched, which was also taken into possession. Thereafter, a disclosure statement of the petitioner was recorded and as per the same, the petitioner led the police party to a room inside the house and from a trunk recovered a total currency notes of Rs.1,35,000/-, which were also taken in possession by the police.

Thereafter, the petitioner took the police party to a car, which was parked near his house and from the dash board of the car, a packet was recovered from which 01 kg. of heroine was recovered. The same was also taken in possession by way of a recovery memo.

Counsel for the petitioner has argued that the petitioner, in fact, much prior to registration of the FIR has filed Cr.W.P.-5324-2020 against the State of Punjab, the police official and Balbir Singh Sandhu, DSP, who was the Gazetted Officer in the FIR, was implicated as respondent No.6 in the said petition and ASI Vijay Kumar, who as the informant of the same was impleaded as respondent No.7. Counsel for the petitioner has referred to the prayer clause of the petition, which reads as under :-

“It is, therefore, respectfully prayed that the present petition may kindly be allowed. An appropriate writ, order or direction inter alia directing the respondents to comply with the procedure stipulated under Section 100/160/165/166 Cr.P.C. in case the petitioner is sought to be interrogated upon or investigated upon, as also further directing the respondents to conduct videography or the entire occurrence in case the petitioner is sought to be arrested, in view of the observations recorded by the Hon’ble Division Bench of this Hon’ble High Court on 28.5.2019 in CRA-D-564-2014 ‘Abhijeet Singh Vs. State of Punjab’ and to produce the petitioner immediately before the nearest Magistrate in case any recovery is to be effected from the petitioner in terms of the law laid down by the Hon’ble Supreme Court in the case of Vijaysinh Chandubha Jadeja Vs. State of Gujarat reported as 2011(1) SCC 609 so as to rule out the repeated false implication of the petitioner.”

Counsel for the petitioner has argued that the petitioner much before the registration of the FIR was apprehending that both ASI Vijay

Kumar and DSP Balbir Singh Sandhu will involve him in a case under the NDPS Act, therefore, it was prayed in the said petition that if any case is registered against the petitioner, he should be produced before the Magistrate for conducting the investigation. Counsel for the petitioner further submits that in this petition notice of motion was issued on 28.7.2020 for 28.10.2020 and on receiving the notice of the same, the two police officials have involved the petitioner in the present case.

It is next argued that despite a request made by the petitioner in the aforesaid writ petition that even if in future any case is registered, a search be conducted before the Magistrate. The two police officials recorded the consent of the petitioner that the search be conducted by the same DSP Balbir Singh Sandhu and was never taken before the Magistrate for the purpose of search and recovery.

Counsel for the petitioner submits that the action show the *mala fide* of the two police official involving the petitioner in a false case under the NDPS Act. Counsel has further argued that on the same day the petitioner was shown arrested in two more FIRs under the NDPS Act, i.e. FIR No.10 dated 11.2.2019, registered at Police Station Sadar Batala and FIR No.18 dated 13.1.2021, registered at Police Station STF, Phase 4, SAS Nagar, Mohali. Counsel for the petitioner submits that in both the cases, the petitioner was involved on the basis of the disclosure and in FIR No.18, the petitioner was already in the custody in the present case.

Counsel for the petitioner has then referred to the cases in which the petitioner was earlier involved to submit that looking into his previous antecedents, the petitioner is repeatedly involved in the cases and with reference to the affidavit of the DSP filed by the State of Punjab, submit that he has been acquitted in one FIR of 1994 and 8 other FIRs relating to the years 2001 to 2004 and again acquitted in two FIRs of 2014. Counsel for the petitioner further submits that in one FIR, he has undergone the sentence and in one FIR of 2004, he was convicted on 15.3.2007 and his sentence has been suspended by this Court.

Counsel for the petitioner has next argued that in the present case, the petitioner is in custody for the last more than 01 year and 01 month and the challan stands presented and in view of the defence set up by the petitioner that he is likely to be involved by ASI Vijay Kumar and DSP Balbir Singh Sandhu which has actually happened after filing of this petition, the petitioner is entitled to grant of regular bail.

Counsel for the petitioner further submits that though as per the affidavit of the DSP, the petitioner was lastly involved in a case of 2014, however, for a period of 07 years he was not involved in any other case as he tried to improve but the aforesaid two police officials have falsely implicated him in the present case and after his arrest, he has been implicated in two more cases on the basis of the two disclosures.

The learned State counsel, on the basis of the affidavit of SHO, however, has denied the allegations and submit that the petitioner was

arrested at the spot and recovery of 250 grams of heroin was recovered from his pant and 01 kg. of heroin from the car, which was parked near his house and, therefore, the allegations are of serious nature. However, the affidavit of the SHO, is silent about the filing of the Cr.W.P.-5324-2020 and the fact that notice of motion was issued in this case about two months prior to the registration of the FIR.

On a Court query, the learned State counsel could not dispute that the pendency of the aforesaid direction petition was in the notice of both the police officials and despite that, no other police official was deputed to conduct the recovery to show that a fair and impartial investigation have been conducted.

The learned State counsel, on the basis of the affidavit, has further stated that the car No. PB-18-W-1832 is not in the name of the petitioner and rather it is in the name of one Malook Singh son of Gurdeep Singh, resident of village Bal Purian and on investigation, Malook Singh stated that by availing loan in his name, Joginder Singh @ Jagga has purchased the car. The learned State counsel has also referred to the other cases which remained pending and as per the affidavit, in 9 cases, the petitioner stands acquitted and in 03 cases, including the present case, he is under investigation. It is also not disputed that in FIR Nos.18 and 24, the petitioner was taken into custody while he was already in custody in the present case and in both these FIRs, nothing was recovered from the petitioner, except that he is nominated on the disclosure of the co-accused.

After hearing learned counsel for the parties and considering the fact that the petitioner is in custody for the last 01 year 01 month; the investigation is complete and in view of the fact that the petitioner had already filed Cr.W.P.5324-2020 pointing a finger against complainant ASI Vijay Singh and DSP Balbir Singh Sandhu 03 months prior to the registration of the FIR that they are likely to involve him in a false case and in the said petition notice was issued, though in ordinary prudence on receiving the secret information, some other Gazetted Officer should have been deputed instead of DSP Balbir Singh Sandhu, which raises a suspicion and *mala fide* against the abovesaid two police officials in conducting the investigation, therefore, without commenting anything on the merits of the case, the present petition is allowed and the petitioner is ordered to be released on bail, subject to his furnishing bail bonds/surety bonds to the satisfaction of the Chief Judicial Magistrate/Duty Magistrate, concerned.

(ARVIND SINGH SANGWAN)
JUDGE

March 10, 2022
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No