

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

CRM-M-7040-2022

Date of Decision:-21.04.2022

Harshdeep Singh.

.....**Petitioner.**

Versus

The State of Punjab.

.....**Respondent.**

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. B.S. Kathuria, Advocate for the Petitioner.

Mr. Sandeep Singh Deol, DAG Punjab.

JASJIT SINGH BEDI, J. (ORAL)

The Prayer in this petition is for the grant of regular bail under Section 439 Cr.PC in case FIR No.60 dated 11.07.2021 under Sections 18, 29 of NDPS Act, 1985 registered at Police Station City-2 Abohar, District Fazilka.

The brief facts of the case are that on 11.07.2021 when the police party headed by ASI Balkaran Singh while going for patrolling purposes and checking suspicious persons in a private vehicle, was present at Kandhwala road bye-pass, then an information was received that the accused persons are indulging into illegal activities of bringing opium from Rajasthan at cheaper rate and are selling the same at higher rates and that today, all the accused persons after taking opium from Rajasthan, are coming to Abohar from Hanumangarh side in Car I-20 PB-46Q-4929 and if

a picket is established at a suitable place, then all the accused persons can be nabbed along with huge quantity of opium. The information being reliable and fulfilling the ingredients of Sections 18, 6, 85 NDPS Act, 1985, ASI Balkaran Singh got the FIR in question registered against the accused persons by sending a ruqa to the police station.

ASI Sajjan Singh in coordination with ASI Balkaran Singh, established a naka Hanumangarh road, near Petrol Pump and reached there in Govt. vehicle no.PB-05N-6933. After sometime a car I-20 No.PB-46Q-4929 white colour was seen coming from Hanumangarh side. ASI Sajjan Singh with the help of fellow officials, got stopped the said car and after introducing himself to the said persons separately, ASI Sajjan Singh asked the said persons their names and addresses. The person who was driving the car told his name as Gurjant Singh @ Janta aforesaid, the person who was sitting on the conductor seat, told his name as Varinder Singh @ Bagga and the persons who were sitting in the back seat told their names as Harshdeep Singh (petitioner) and Prem Singh. ASI Sajjan Singh sent the message for sending any gazetter officer at the spot.

Sh. Rahul Bhardwaj, PPS, DSP Abohar reached the spot ultimately and a search was conducted and during the search, 3 Kgs of Opium was recovered from the vehicle from under the seat.

During the investigation, Lakhbir Singh son of Didar Singh (grandfather of the petitioner-accused Harshdeep Singh) moved an application (No.3430-SPL-PC dated 26.07.2021) to the SSP Fazilka pleading the innocence of the accused Harshdeep Singh and requested for conducting of an enquiry into the matter. The said application was marked to the DSP(D), Fazilka for enquiry. The enquiry report No.176 dated

26.08.2021 was approved by the SSP, Fazilka. A copy of the said report has been attached with the petition as Annexure A-1. As per verification of the police, the offending vehicle belongs to accused Gurjant Singh @ Janta and the petitioner was declared to be innocent.

The petitioner moved an application under Section 169 Cr.PC before the learned trial Court for releasing him from the judicial custody in the FIR in question as he was found innocent during enquiry. The said application was rejected by the learned trial Court i.e. court of learned Judge, Special Court, Fazilka vide order dated 29.09.2021. The CRR No.1317 of 2021 (filed by the accused Harasheep Singh against the aforesaid order dated 29.09.2021) was dismissed by this Court vide order dated 03.12.2021.

The Counsel for the petitioner has firstly contended that the petitioner has been falsely implicated in the present case. Undoubtedly, he is related to the other accused travelling in the vehicle but in fact they were all travelling to Shri Hazoor Sahib and Salasar Dham (to pay obeisance) and so far as the petitioner is concerned, he being of the age 18/19 years was unaware that the contraband was being carried in the car in which he was travelling. It was on this count that his grandfather had moved an application for further investigation which had culminated in his favour (Annexure A-1). The Counsel for the petitioner further points out that there has been a violation of Section 42 of the NDPS Act and this itself entitles the petitioner to the grant of concession of regular bail. He lastly contended that as the recovery was effected from under the seat of the car, it would be matter of adjudication during the trial as to whether the petitioner could be said to be in conscious possession of the same.

The learned State Counsel on the other hand has submitted a reply of the DSP, Sub Division Abohar, District Fazilka dated 18.04.2022. While referring to the reply the counsel for the State has submitted that the petitioner was in conscious possession of the contraband as he was travelling in a vehicle owned by his cousin. It was further contended that though he was found innocent during the enquiry, the court has refused to discharge him and since the said order had been upheld by this Court, the petitioner could not derive the benefit of the said enquiry report exonerating him. On facts it was contended that as petitioner was in custody since 11.07.2021, the challan had been filed on 23.09.2021 and the charges came to be framed on 15.11.2021. The next date fixed for prosecution evidence was 10.05.2022 and none of the 10 PWs had been examined till date.

I have heard counsel for both the sides at length.

As per the case of the prosecution all the four accused were travelling in a car when on the basis of secret information the car was stopped at a naka and the recovery effected. Undoubtedly, the investigating agency has found that the petitioner was innocent not only as the investigating agency recorded the statement of various persons but it has also referred to the fact that the call details of the petitioner do not reveal that he was in contact with any undesirable person. Further, the call details would reveal that there was absolutely no evidence to suggest that the petitioner had earlier visited Rajasthan or Madhya Pradesh to procure contraband at cheaper rates to sell them at higher rates. The relevant extract of the enquiry report is reproduced hereinbelow:-

“ Inquiry Report: From the perusal of the statements recorded during my further investigation and the case file, it has been found that Harshdeep Singh, grandson of the

applicant Lakhbir Singh son of Didar Singh, resident of village Ratoke, District Tarn Taran is of the age 18-19 years and is 12th class pass. He was doing agriculture work due to the closure of schools by virtue of Corona pandemic and was prepared for his further studies. The accused Gurjant Singh, who is the grandson of the uncle of the applicant and Varinder Singh is the grandson of the uncle of the applicant and the accused Prem Singh, is the resident of their adjoining village Ramuwala. Gurjant Singh and Varinder Singh took his grandson Harshdeep Singh by saying that we are to go to Sri Hazoor Sahib and Salasar Dham (Rajasthan) to pay obeisance. His grandson Harshdeep Singh being a child and being the relatives believed them and went with them on 09.07.2021. On 11.07.2021, he was coming back from Rajasthan with Gurjant Singh etc., in the car, then near Abohar, ASI Balkaran Singh, Anti Narcotic Cell, District Fazilka along with police party was present on Kandhwala Road Chowk Bye-pass, Abohar for patrolling and checking of suspected persons. Then a Special informer informed ASI Balkaran Singh that Gurjant Singh @ Janta son of Baldev Singh, Varinder Singh @ Baga son of Sukhdev Singh, Prem Singh son of Darshan Singh resident of village Ramuwala and Harshdeep Singh are coming from Hanumangarh (Rajasthan) after taking opium from Rajasthan towards Abohar in above said car mark I-20 bearing no.PB-46-Q-4929, colour white. Upon this, ASI Balkaran Singh No.663/Fazilka, on the basis of the information, on Kandhwala Chowk Bypass, Abohar got an FIR No.60 dated 11.07.2021 registered under Section 18, 29/61/85 NDPS Act, police station City-2, Abohar against Gurjant Singh @ Janta son of Baldev Singh, Varinder Singh @ Baga son of Sukhdev Singh, Harshdeep Singh son of Shatarpal Singh, residents of village Chak Ratoke, police station Khemkaran, District Tarn Taran and Prem Singh son of Darshan Singh resident of Ramuwal Ratoke, Police Station Khemkaran, District Tarn Taran. ASI Balkaran Singh along

with his colleagues staged the nakabandi on Kandhwala Chowk Bye-pass, Abohar and called another Investigating Officer ASI Sajjan Singh at the site, who along with his colleagues reached the site. ASI Balkaran Singh informed him about the circumstances and handed over the carbon copy of the ruqa and ASI Balkaran Singh along with his colleagues was relieved from the site. Then ASI Sajjan Singh along with colleagues had staged the nakabandi. Then with the assistance of his colleagues, he signalled with the torch and stopped them. ASI Sajjan Singh disclosed his identity and asked the names and addresses of all the four persons. Then the car driver disclosed his name as Gurjant Singh @ Janta, the person sitting on the conductor seat disclosed his name as Varinder Singh @ Baga. The persons sitting on the rear seat disclosed their names as Harshdeep Singh and Prem Singh. ASI Sajjan Singh called Rahul Bhardwaj, PPS, Deputy Superintendent of Police, Abohar at the site. Upon searching the car in his presence, under the driver seat, opium wrapped in a polythene bag was recovered which upon weighting was 03 Kg. The recovered opium and the said car was taken into police possession through a Memo. ASI Sajjan Singh arrested them in the case and conducted the investigation. Station House Officer of the police station produced the accused before the Court and has got them confined in Judicial Lockup.

In respect of Harshdeep Singh son of Shatarpal Singh, resident of village Ratoke, Tarn Taran, I have verified from secret and open investigation from the respectable persons of the village Ratoke and it has been found that age of Harshdeep Singh is 18-19 years and he has studied upto 12th class. Due to the closure of schools/colleges by virtue of Corona pandemic, apart from doing agriculture work, he is preparing for further studies. The Panchayat of the village and the respectable persons in their statements have mentioned that Harshdeep Singh is very laborious boy. No complaint of selling any intoxicated substance or consuming intoxicants has

ever received against him. From verifying the previous record from the police station Khemkaran, Tarn Taran, no case has been found to be registered against him. Harshdeep Singh was taken by Gurjant Singh etc. on the pretext of paying obeisance in the Gurudwaras at their expenses being having relatives. At the time of purchasing the opium, Gurjant Singh etc. ignored Harshdeep Singh, purchased the opium from a person from Madhya Pradesh, about which Harshdeep Singh was not having any knowledge. 03 Kg Opium has been recovered from under the driver seat of the car of Gurjant Singh. No evidence has come to the notice with regard to the involvement of Harshdeep Singh in this regard. Since Harshdeep was not having any concern with the recovered opium, no offence is found against him and the call detail of the mobile number 95922-30314 of Harshdeep Singh for the period from 01.06.2011 to 11th July was obtained. From the perusal of the call detail, it has been found that no evidence has come to the notice about the connection of Harshdeep Singh with bad elements and no evidence has come to the notice about his earlier visits to Rajasthan or Madhya Pradesh. From my further investigation, Harshdeep Singh son of Shatarpal Singh, resident of village Ratoke, police station Khemkaran, District Tarn Taran has been found to be innocent. Gurjant Singh @ Janta son of Baldev Singh, Varinder Singh @ Baga son of Sukhdev Singh, residents of village Chak Ratoke, police station Khemkaran, District Tarn Taran and Prem Singh son of Darshan Singh, resident of Ramuwal Ratoke, police station Khemkaran, District Tarn Taran have been found to be guilty in the case.

Conclusion Report:- If approved, Station House Officer, Police Station City-2, Abohar may be directed to legal action be taken for getting Harshdeep Singh declared as innocent and discharged in the said case and after collecting maximum evidence against the accused Gurjant Singh, Varinder Singh and Prem Singh and present the challan in the Court at the

earliest.

The report is submitted for necessary orders, pl.

*Sd/-
Bhupinder Singh Bhullar, PPS
Deputy Superintendent of Police (D)
Fazilka*

'A' approved.

SHO City-2 Abohar, for necessary action as per 'A'.

*Sd/- 01.09.2021
Senior Superintendent of Police
Fazilka*

I am conscious of the fact that the application for discharge has been dismissed by the trial Court vide order Annexure A-2 which has further been upheld by this Court. However, what is relevant to note is that the investigating agency itself has at one stage found the petitioner to be innocent. Therefore, in the peculiar facts and circumstances of the case, the petitioner would be entitled to the benefit of doubt and so can be granted the concession of bail.

The Counsel for the petitioner has vehemently argued that the provisions of Section 42 of the NDPS Act have been violated and this fact also entitles the petitioner to the grant of regular bail.

On 23.03.2022 this Court had asked the State Counsel to verify as to whether Section 42 of the NDPS had been complied with or not. As per the reply dated 18.04.2022 there is no specific response to the contention raised by the counsel for the petitioner regarding the violation of Section 42 of the NDPS Act. The Learned State Counsel and the IO of the case ASI Raj Singh were asked to examine the report under Section 173 Cr.PC along with accompanying documents in Court. They fairly conceded that there was no document in the entire challan showing that the provisions

of Section 42 of the NDPS Act had been complied with. The Hon'ble Supreme Court in **Sarija Banu (A) Janarthani @ Janani & Anr. Vs.**

State through Inspector of Police 2004(12) SCC 266 held as under:-

“ It is pertinent to note that in the bail application the appellants, it was alleged, that there was serious violation of [Section 42](#) of the NDPS Act. In the impugned order nothing is stated about the alleged violation of [Section 42](#), and it is observed that it was not necessary to consider such violation at this stage. **The compliance of [Section 42](#) is mandatory and that is a relevant fact which should have engaged attention of the Court while considering the bail application.** In the aforesaid circumstances having regard to the special facts of the case, we direct that the appellants 1 and 2 be released on bail on executing a bail bond for Rs. 50,000 each with two solvent sureties for the like amount to the satisfaction of the Special Judge, EC/NDPS, Madurai on the following conditions:

- (1) The counsel for the appellants requested that the appellants may be allowed to stay outside the State of Tamil Nadu. We are not inclined to grant such a prayer as the respondents police authorities would not be able to ensure the timely presence of the appellants in Court;
- (2) The appellants shall not leave jurisdiction of the District Court, Madurai and shall report before the Circle Inspector, Karuppayurani Police Station once in two weeks for 3 months, thereafter, once in a month.
- (3) The appellants shall surrender their pass-port before the Court, if not already seized by the police.

The counsel for the petitioner has also referred to the judgments of the Hon'ble Supreme Court in **Rajender Singh Vs. State of Haryana Criminal Appeal No.1051 of 2009** Decided on **08.08.2011**, **Sukhdev Singh Vs. State of Haryana Criminal Appeal No.2118 of 2008** Decided on **13.12.2012** and **Darshan Singh Vs. State of Haryana 2016(1) RCR**

(Criminal) 333 to contend that the provisions of Section 42 were mandatory in nature and the violation thereof entitles the accused for acquittal. Thus it can be safely opined that non compliance of Section 42 of the NDPS Act would entitle the petitioner to bail.

Keeping in view the aforementioned discussion and the relevant law cited, the petitioner would be entitled to the concession of regular bail.

Hence without commenting on the merits of the case, the present petition is allowed and the petitioner **Harshdeep Singh** son of Sh. Shattarpal Singh is ordered to be released on bail subject to the satisfaction of learned CJM/Duty Magistrate, concerned.

The petitioner shall appear before the police station concerned on the first Monday of every month till the conclusion of the trial and inform in writing each time that he is not involved in any other crime other than the present case.

If the petitioner indulges in similar offence for which he is currently charged, the State would be at liberty to move an application for cancellation of bail.

Petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

April 21, 2022
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>