

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

101

CRM-M-9926-2022

Reserved on : 24.03.2022

Pronounced on :22.04.2022

Rajneesh Gill

.....Petitioner

Versus

Union of India

.....Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

**Present: Mr. Ashok Giri, Advocate,
for the petitioner.**

**Mr. Rajiv Sharma, Advocate,
for the respondent-Union of India-Narcotics
Control Bureau, Chandigarh.**

VINOD S. BHARDWAJ , J.

The instant petition has been filed under Section 438 Cr.P.C. praying for grant of pre-arrest bail to the petitioner in case FIR No.45 dated 09.09.2019 under Sections 8/9-A/20/21/23/25-A/29/60 of the NDPS Act, 1985, registered at Police Station Narcotics Control Bureau, Zonal Unit Sector 25(W), Chandigarh.

The brief facts of the case are that the Intelligence Officer, Narcotics Control Bureau, Chandigarh had filed a complaint pointing out that on 09.09.2019, a secret information was received to the effect that one Akshinder Singh Sodhi resident of Jalandhar Punjab is holding substantive quantity of cocaine at his house and if surveillance is maintained and the house is searched, the same can result in a good seizure of the contraband.

The said secret information was produced in writing and placed before the Superintendent of Narcotics Control Bureau and thereafter, constituted a team to take necessary action as per law and also accompanied the team to supervise the seizure procedure. The team reached at the place of raid at 17.00 hrs. and a local police team was also joined in the proceedings. The team of Narcotics Control Bureau thereafter conducted a search of the house in the presence of the independent witnesses who had witnessed the proceedings of the *Panchnama*. During the search of the room adjacent to the bathroom, the officer recovered a green packet having logo “Lacoste Perfumes” found kept on the bed which contained a glass jar carrying a packet of smoking, rolling papers on which ELEMENTS ultrathin rice paper was written and a golden cover polythene was recovered. On tearing the golden polythene, a zipper polythene containing white powder was recovered. Upon testing the same with the field drug detection kit it gave positive result for Cocaine. The material when weighed was found 115 grams. In addition to the same, one small zipper plastic containing crystalline white powder was also recovered which on testing gave a positive result for Ephedrine and it weighed 13 grams. On further search of the bag, seven zipper pouches were found containing suspected capsules. All pouches were marked and the contents thereof were taken in possession since no field testing kit for the contents of the said capsules was available in the field drug detection kit.

That on a further search of the bag, three polythene pouches were found containing white powder believed to be suspected mixing agent which was weighed as 270 grams. In addition thereto, one torn silver packet was found from the top of wooden rack and two packets containing 18

packets of strips in green colour pouch which on testing with field drug detection kit gave positive result for Hashish Oil. That the accused Akshinder Singh Sodhi son of Rajinder Singh came in a vehicle with the NCB Sub Zone Amritsar at his residence where he was made aware of the recovery effected in the presence of the independent witnesses. The said witnesses admitted that the contraband mentioned in the *Panchnama* belonged to him and identified the bag in which he had kept the contraband. He also acknowledged about the seized Hashish oil from the top of wooden shelf along with various other material that was recovered.

Akshinder Singh Sodhi made a disclosure statement that he had purchased Cocaine from one Laddi of Tarn Taran and also had one associate namely Rajneesh Gill(petitioner herein) with whom he smuggled and used to sell the contraband to locals. Even though further search of the house was conducted, however, no further contraband was recovered. The total recovery thus effected was 115 grams of Cocaine, 13 grams of Ephedrine and 80 grams of Hashish oil from accused Akshinder Singh Sodhi.

Learned counsel appearing on behalf of the petitioner has argued that the name of the petitioner has figured in the disclosure statement made by Akshinder Singh Sodhi who is an accused and from whose possession recovery of the contraband is effected. He further submits that recovery of 115 grams of Cocaine from the main accused is marginally more than the non-commercial quantity which postulates upto 100 grams to be non-commercial. It is further submitted that 80 grams of Hashish oil would constitute a small quantity as the Schedule prescribes small quantity upto 100 grams. He also submits that Ephedrine would not fall under the ambit of NDPS Act as the same is not mentioned in the Schedule attached to the

NDPS Act.

Learned counsel appearing on behalf of the petitioner has vehemently argued that pursuant to the induction of the petitioner as an accused, his house as well as shop were searched by the NCB, but no incriminating substance was detected or recovered and only photocopies of his own Pan Card, Aadhar Card and driving licence were taken into custody. It is argued that onus to prove the allegations are on the NCB and that pursuant to notice issued by the NCB, the petitioner had also joined the investigation, but the NCB could not find any incriminating evidence against him.

Reply on behalf of NCB was furnished by the Intelligence Officer, NCB, Chandigarh, wherein he has pointed out that the petitioner is a habitual offender and had concealed the facts that one more case under the NDPS Act had been registered against him by the NCB Delhi and that vide order dated 02.03.2021, he had been declared as a proclaimed offender. It is further submitted that the other co-accused are still absconding and commercial quantity of the narcotic drugs were recovered by the NCB. It is alleged that during the investigation, the NCB has found that basically it is an international gang and that the petitioner used to arrange documents for securing drugs from abroad and that the petitioner was infact a partner with Akshinder Singh Sodhi.

That voluntary statement of Akshinder Singh Sodhi was recorded on 15.09.2019 and he provided the gmail accounts used by him for communication with Akshinder Singh Sodhi as well as the photographs/documents stored by him in the gmail account including the airway bill issued by Air Canada vide which 200 kgs. of Methamphetamine

were booked from Canada to Malbourne, Australia. He had also provided the screen shots thereof. It was also pointed out that Harpal Singh @ Laddi had asked Akshinder Singh Sodhi to provide three numbers of IDs of different persons so as to sent the parcels containing Cocaine. The three numbers of IDs were also arranged by the petitioner-Rajneesh Gill. It has also been narrated that name of Akshinder Singh Sodhi also figured in the NCB Delhi case and that screen shots of the currency notes to be used for the purposes of Hawala transactions were also recovered. The photographs/screen shots of the travel history of the shipment of FedEx vide which Cocaine was sent and caught in Memphis, Tennessee, USA was also provided. There was a communication as regards the one shipment from Los Angeles, USA to Brisbane, Australia and another from British Columbia to Brisbane, Australia along with the addresses where the parcels containing drugs were sent in Australia.

A detailed reference was made to *inter se* link the accused Akshinder Singh Sodhi as well as the petitioner and establishing that the petitioner was a partner along with the accused Akshinder Singh Sodhi in the said drug trade and that he actively also facilitated preparation of documentation and securing false IDs. The NCB has opposed the petition vehemently and submitted that considering the antecedents of the petitioner as well as he being declared as a proclaimed offender in a case registered at NCB Delhi, there is every likelihood that the petitioner is likely to engage in the said trade if granted the concession of anticipatory bail. Hence, bar under Section 37 of the NDPS Act shall operate. Besides, the custodial interrogation of the petitioner is required in order to un-earth the entire nexus and to burst the said trade racket. Learned counsel appearing on

behalf of the NCB had also placed on record the call details pointing out the said nexus and the continued communication between the petitioner as well as the accused Akshinder Singh Sodhi.

Learned counsel appearing on behalf of the petitioner has placed reliance on the judgment in the matter of **State by (NCB) Bengaluru Versus Pallulabid Ahmad Arimutta and another** passed in Criminal Appeal No.242/2022 decided on 10.01.2022 and has argued that the confessional statement recorded under Section 67 of the NDPS Act will remain inadmissible in trial of an offence and as such there is no basis to place reliance on the said statement for the purposes of denial of the pre-arrest bail to the petitioner.

The said judgment, however, would not be applicable in the instant case inasmuch as the respondent-accused(therein) arrested by the NCB and were thereafter granted the concession of regular bail by this High Court. The said order granting regular bail was a subject matter of challenge before the Hon'ble Supreme Court by placing reliance on the confessional statement recorded under Section 67 of the NDPS Act. The Hon'ble Apex Court did not accept the contention of the NCB to be strong enough to upset the order granting regular bail to the respondent-accused(therein).

Further, in the matter of **Union of India Versus K.A. Najeer**, Criminal Appeal No.98 of 2021, decided on 01.02.2021, it was held that the mandate of Section 37 of the NDPS Act was more stringent than the one contained in UAPA. It is further argued that there was no basis to assume that if enlarged on bail, the petitioner is not likely to involve in any other similar case. Besides, there is no reasonable ground to assume that the petitioner is innocent.

Taking into consideration the facts noticed above and also that the petitioner is a proclaimed offender in another case registered by the NCB Delhi, the circumstantial as well as link evidence collected and submitted by the investigating agency reflecting complacency of the petitioner with the accused Akshinder Singh Sodhi from whose possession commercial quantity of contraband was recovered, the photographs of the chat of digital evidence along with the calls/record linking the continuous communication of the petitioner with Akshinder Singh Sodhi during the time of movement of the contraband as well as the mandate of Section 37 of the NDPS Act, there is no convincing and cogent reason for extending the concession of pre-arrest bail to the petitioner. There are no compelling circumstances that would suggest false implication of the petitioner or would create strong suspicion against the prosecution case set-up against the petitioner. Besides, there is no such special circumstances brought on record as would give reasonable cause to the Court to believe that the petitioner is not involved in the commission of the offence. Given the manner in which the offence has been made and the scale of operation, I am of the opinion that the custodial interrogation of the petitioner would be necessary to lay a hold on the international drug cartel gang and their operational nexus.

The present petition is accordingly dismissed.

April 22, 2022
seema

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No