

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-11003-2022 (O&M)
Date of decision: 22.03.2022

Vinay Gupta

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Ruhani Chadha, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for grant of regular bail in FIR No.32 dated 01.03.2021 under Sections 22 & 25 of NDPS Act (Section 29 of NDPS Act was added later on), registered at Police Station Dakha, District Ludhiana Rural.

Learned counsel for the petitioner relies upon the order dated 04.03.2022 passed in CRM-M-8216-2022, vide which co-accused Mandeep Singh @ Manga has been granted the concession of regular bail. The operative part of the order reads as under: -

“...Learned counsel further relies upon order dated 10.02.2022 passed in CRM-M-33309-2021 (Annexure P-3), vide which co-

accused Daksh Arora has also been granted the concession of regular bail by this Court. The operative part of the order reads as under:

“Learned counsel for the petitioner relies upon the order dated 23.12.2021 passed in CRM-M-52196-2021, vide which co-accused Honey Sehgal has already been granted the concession of regular bail by this Court. The operative part of the order reads as under: -

“...Counsel for the petitioner has argued that as per the allegations in the FIR, registered at the instance of ASI Harpreet Singh, while on a patrol duty, he along with other co-police officials received a secret information that one Sukhpal Singh @ Pali is indulged in the business of selling of intoxicant tablets and he is coming on a motorcycle to Mullanpur side for supplying the same and if a barrier is put up, he can be apprehended with huge quantity of the tablets. On receiving the information, a ruqa was sent to the Police Station for conducting the investigation and thereafter, the police party apprehended him and recovered 15000 intoxicant tablets of TRAMADOL HYDROCHLORIDE. Later on, Sukhpal Singh disclosed the name of one Mandeep Singh @ Manga from whom, he has taken the said tablets and on arrest of Mandeep Singh @ Manga, 40,000 intoxicant tablets were recovered. Again, on the

basis of the disclosure statement of Mandeep Singh, the petitioner was nominated in the case and 25,000 tablets were recovered. It is also submitted that the petitioner is the first offender and he is in custody for the last about 03 months and 27 days; the investigation is complete; challan stands presented, however, charges are yet to be framed and there are 18 PWs and it will take long time in conclusion of the trial. Counsel for the petitioner has further submitted that on an earlier occasion, the petitioner was granted interim bail awaiting the report of the FSL and on receiving the report, in compliance of the order of this Court, the petitioner has surrendered back. It is further submitted that during the said intervening period, when he was on interim bail for a period of about 04 months, he has not misused the concession of bail and has surrendered back on time as per the directions of this Court.

*Counsel for the petitioner has also submitted that the police has recorded the successive disclosure statements of the accused persons, therefore, it will be matter of trial whether the nomination of the petitioner, on the basis of the disclosure statement of the co-accused, is admissible in the case in view of the judgment of the Hon'ble Supreme Court “**Tofan Singh vs State of Tamil Nadu**”, 2013(4) RCR (Criminal) 631.*

Counsel for the State has not disputed the factual position. It is also not disputed that the petitioner is not involved in any other case and he has not misused the concession of bail, however, counsel for the State has submitted that the recovery is of commercial quantity and therefore, he should not be granted the concession of bail...”

As per allegations in the FIR, on receiving a secret information that Sukhpal Singh @ Pali is habitual of selling intoxicant tablets and is coming in the area of Mullanpur to sell the same on motorcycle, he was apprehended and 15000 intoxicant tablets were recovered from him.

Learned counsel for the petitioner submits that on the basis of disclosure statement of Sukhpal Singh @ Pali, Mandeep Singh @ Manga was nominated and 40000 tablets of Tramadol Hydrochloride were recovered from him and on his disclosure statement, Honey Sehgal was nominated and recovery of 25000 intoxicant tablets was effected from him. It is further submitted that on the basis of disclosure statement of co-accused Honey Sehgal, one Vishal Anand was nominated and from him, 100000 intoxicant tablets were recovered and on his disclosure statement, the petitioner was nominated and 5000 intoxicant tablets were recovered from him. It is also submitted that though after receiving the secret information, the Investigating Officer, when arrested first accused Sukhpal

Singh @ Pali, a proper procedure was followed and he was given notice under Section 50 of NDPS Act, however, in the subsequent change, when disclosure statements of other accused were recorded and the police had prior information of involvement of subsequent accused, which were nominated on the basis of successive disclosure statements, while arresting them or while effecting the recovery, no proper procedure under Section 50 of NDPS Act was followed, to ascertain the recovery, despite the fact that prior information was available with the police, therefore, it will be a matter of trial, whether entire procedure adopted in this case subsequent to arrest of first accused Sukhpal Singh @ Pali is correct or not.

Learned State counsel, on the basis of reply by way of affidavit of Inspector Jatinder Pal Singh, SHO, Police Station Dakha, District Ludhiana (Rural), in which aforesaid fact is not stated, has submitted that apart from Sukhpal Singh @ Pali, who was given notice under Section 50 of NDPS Act, no other accused was given notice under Section 50 of NDPS Act, despite there being prior information.”

For the sake of brevity, the facts are not reproduced again.

Learned counsel for the petitioner further submits that in the sequence of multiple disclosures of the co-accused, who were arrested by the police, the name of the petitioner also surfaced in the disclosure of co-accused Sukhpal Singh, on whose disclosure, even aforesaid co-accused Daksh Arora was nominated in this

case.

Learned counsel for the petitioner further submits that recovery of 40000 intoxicant tablets was allegedly effected from the petitioner.

Learned State counsel could not dispute the factual position that while conducting the search, notice under Section 50 of the NDPS Act was given only to co-accused Sukhpal Singh @ Pali and no such notice was given to other accused, despite there being a prior information on the basis of the disclosures, therefore, it will be a matter of trial whether a proper procedure was followed or not...”

Learned counsel submits that the petitioner was nominated in the FIR on the basis of disclosure statement of co-accused Parveen Kumar, who has already been granted the concession of regular bail vide order dated 18.02.2022 passed in CRM-M-5514-2022 and two more co-accused namely Honey Sehgal and Daksh Arora have also been granted the concession of regular bail by this Court.

Learned State counsel has filed the custody certificate dated 21.03.2022 in the Court today and has not disputed the factual position. As per the custody certificate, the petitioner is in custody for the last 01 year and 04 days and is not involved in any other case.

After hearing learned counsel for the parties, without commenting anything on merits of the case and considering the aforesaid facts and circumstances of the case, this petition is allowed and the petitioner is directed

to be released on regular bail subject to furnishing his bail/surety bonds to the satisfaction of the trial Court/Illaqa Magistrate/Duty Magistrate, concerned.

22.03.2022
vishnu

[ARVIND SINGH SANGWAN]
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No