

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

CRM-M-13314-2021 (O&M)

Date of decision : 17.03.2022

Gurbir Singh

... Petitioner(s)

Versus

State of Punjab

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

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

Ms. Parul Khanna, AAG Punjab.

ALKA SARIN, J. (ORAL)

Heard in physical mode.

This is the second petition under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the petitioner in FIR No.49 dated 07.03.2020 under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short the 'NDPS Act') registered at Police Station Sultanpur Lodhi, District Kapurthala. The first bail petition being CRM-M-41687-2020 was dismissed as withdrawn on 25.01.2021.

Learned counsel for the petitioner would contend that since the withdrawal of the first petition not much progress has been made in the trial inasmuch as despite the charges having been framed on 03.02.2021, only two witnesses have been examined till date. He would further contend that the petitioner has been in custody since 07.03.2020 and that there is no other case pending against the petitioner.

On merits it has been argued by learned counsel for the petitioner that a perusal of the recovery memo (Annexure P-2), which is

hand written, reveals that the FIR number was mentioned on the same. Learned counsel for the petitioner has relied upon the judgment of Division Bench of this Court in the case of “Didar Singh @ Dara Vs. The State of Punjab” [2010(3) RCR (Criminal) 337] and “Ajay Malik Vs. State of U.T. Chandigarh” [2009(3) RCR (Criminal) 649] to contend that since the FIR had not been registered at the time when the recovery memo was prepared, mention of the FIR number on the recovery memo would be very suspicious. Learned counsel for the petitioner has further relied upon the judgments of this Court in the case of “Amandeep Singh @ Sandeep Singh Vs. State of Punjab” [CRM-M-20498-2021 decided on 27.10.2021] and “Gurpreet Singh Vs. State of Punjab” [CRM-M-48050-2021 decided on 07.02.2022].

Learned counsel for the State has filed status report by way of affidavit of Sh. Rajesh Kakkar, PPS, Deputy Superintendent of Police, Sub-Division Sultanpur Lodhi, District Kapurthala wherein it has been stated that the petitioner has been in custody since 07.03.2020 and out of 11 prosecution witnesses, only 2 witnesses have been examined till date. Learned counsel for the State is not in a position to deny that there is no other case pending against the petitioner. Learned counsel for the State would contend that FIR was lodged after the preparation of the recovery memo, however, a blank space was left and the FIR number was filled in thereafter.

Heard.

In the present case, the petitioner has been in custody since 07.03.2020 and despite the charges being framed on 03.02.2021, there is not

much progress in the trial. Further, there is no other case pending against the petitioner.

On the recovery memo admittedly the FIR number has been written. In the case of **Didar Singh @ Dara** (supra), it has been held in para Nos.29 and 32 as under :

*“29. There is another infirmity on the record which further creates a doubt about the entire prosecution case. As per the prosecution, at the time of the recovery, various documents were prepared. Those documents are Ex.PA, Ex.PB, Ex.PC, Ex.PD, Ex.PE and Ex.PF. All these memos bear the FIR number of the case. It is admitted case of the prosecution that when these documents were prepared, the FIR was not registered and FIR No. was not available as the same was registered later on, on the ruqa sent by the police. It has not been explained how all these memos contained the FIR number, which was not existing at the time when these memos were prepared. In *Ajay Malik v. State of U.T, Chandigarh*, 2009 (3) RCR (Crl.) 649 this Court while dealing with similar situation has observed that two inferences could be drawn from such situation, i.e, either the FIR was registered prior to the alleged recovery of the contraband or number of FIR was inserted in the document after its registration. But in both situations, it seriously reflects upon the integrity of the prosecution version. While relying upon several other decisions, it was held that such serious lapses in the prosecution case create a doubt to the prosecution theory.*

32. In view of the aforesaid discussion, the appeal is allowed and the impugned judgment of conviction and

order of sentence passed by the Judge, Special Court, Amritsar are set aside. The appellant, who is in custody, be set at liberty forthwith, if not required in any other case.”

Keeping in view the fact that it is not denied that at the time when recovery memo was prepared the FIR had not been registered and as also the trial is likely to take some time to conclude, no useful purpose would be served by keeping the petitioner behind the bars any further. Without commenting upon the merits of the case, I deem this to be a fit case to grant the concession of regular bail to the petitioner. The petitioner is directed to be released on bail subject to his furnishing bail bonds/surety bonds to the satisfaction of the Illaqa Magistrate/Duty Magistrate/Trial Court concerned.

However, the Prosecution will always be at liberty to apply for cancellation of bail in case the petitioner is found to be misusing the concession of bail in any manner.

It is also made clear that any observation made herein shall not be treated as an expression of opinion on the merits of the case.

Disposed off.

17.03.2022
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO