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

CRM-M-12308-2022 (O&M)

Date of decision : 24.11.2022

Lakhwinder Singh @ Lakha

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

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

Mr. Ramdeep Partap Singh, Sr. DAG, Punjab.

VIKAS BAHL, J. (ORAL)

Prayer in the present petition is for grant of regular bail to the petitioner in FIR No.126 dated 14.12.2021 registered under Sections 18 and 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and Section 25 of the Arms Act, 1959 at Police Station Sadar Phagwara, District Kapurthala.

Learned counsel for the petitioner, on 29.09.2022 had raised two arguments which were recorded in the order dated 29.09.2022. The said order is reproduced hereinbelow:-

“Learned counsel for the petitioner has primarily raised two arguments. The first argument raised is that in the present case, the raid had been conducted in the house of Santokh Singh on the basis of secret information, but however, the provisions of Section 42 of the NDPS Act had not been complied with, inasmuch as, the information in writing had not been sent to the superior officer. It is also

stated that although, in the consent memo, signatures of the present petitioner Lakhwinder Singh @ Lakha appear, but the said consent memo mentions the name of Sarabjit Singh.

Learned State counsel is directed to file a specific affidavit of the Senior Superintendent of Police, Kapurthala on the said aspect.

The affidavit be filed within a period of three weeks from today with an advance copy to learned counsel for the petitioner.

Learned counsel for the petitioner is directed to place on record the consent memo of Lakhwinder Singh @ Lakha and also give a copy of the same to learned State counsel.

Adjourned to 31.10.2022.”

Learned counsel for the petitioner has submitted that in response to the said arguments, the State of Punjab has filed status report by way of affidavit of Navneet Singh Bains, IPS, Senior Superintendent of Police, District Kapurthala on behalf of respondent i.e. State of Punjab and has made specific reference to para 7 of the same, in which, it has been admitted that as per police file and the report of Superintendent of Police, Sub Division, Phagwara, it had been found that compliance of Section 42(2) of NDPS Act has not been made by Inspector Gagandeep Singh.

Learned counsel for the petitioner has highlighted the fact that the present case was based on secret information and in pursuance of the secret information, the police had raided the house of Santokh Singh from where six persons were apprehended from whom, as per the case of the prosecution, individual recoveries were made. It is further submitted that four of the six persons i.e. Amanpreet Singh @ Aman, Sarabjit Singh @ Sabi, Harvinder Singh @ Binda and Barinder Singh @ Bikky have been

granted regular bail by the Judge, Special Court, Kapurthala. It is contended that the petitioner is in custody since 14.12.2021 and investigation is complete and challan has been presented and there are 11 prosecution witnesses, out of which, none have been examined as yet and thus, the conclusion of trial is likely to take time. It is further contended that the petitioner is not involved in any other case under the NDPS Act.

On the other hand, learned State Counsel has opposed the present petition for grant of regular bail to the petitioner and has submitted that after the police party had raided the house of Santokh Singh, the petitioner, alongwith five other persons, was apprehended and recoveries were made from the personal search of the said six persons and recovery from the present petitioner was of 280 grams of heroin which would fall within the ambit of commercial quantity. It is further submitted that the petitioner is involved in another case, although, the same is not under the NDPS Act. However, the other facts as stated by the learned counsel for the petitioner and the contents of the affidavit filed by Navneet Singh Bains, IPS, Senior Superintendent of Police, District Kapurthala have not been disputed by the learned State Counsel.

This Court has heard the learned counsel for the parties and has perused the paper book.

A perusal of FIR would show that the case was registered on the basis of secret information and after the secret information, the police party had raided the house of Santokh Singh and thus, compliance of Section 42 of the NDPS Act was necessary. It was the case of learned counsel for the petitioner that the provisions of Section 42 of the NDPS Act

have not been complied with. In para 7 of the affidavit dated 23.11.2022 filed by Navneet Singh Bains, IPS, Senior Superintendent of Police, District Kapurthala in pursuance of order dated 29.09.2022 passed by this Court, it has fairly been stated that there is non-compliance of Section 42(2) of the NDPS Act. Para 7 of the said affidavit is reproduced hereinbelow:-

“7. That it is respectfully submitted that in regard to compliance of Section 42 (2) of NDPS Act, it is submitted that as per the police file and the report of Superintendent of Police, Sub- Division Phagwara, it has been found that compliance of Section 42(2) of NDPS Act has not been made by Inspector Gagandeep Singh, No.218/JR.

It is further submitted that it is pertinent to mention here that however, Special Reports in regard to Registration of FIR were sent by Inspector Gagandeep Singh No. 218 JR within 48 hours to his Senior Officers and District Magistrate through Constable Bharat Sharma No. 1362/Kpt and the same has been verified from Constable Bharat Sharma No. 1362/Kpt. That it has further come on record that the accused were produced before the Ld. JMIC, Phagwara Sh. Arun Shouri within 24 hrs and the same is proved as Zimni No. 2 has been seen and endorsed by the Ld. JMIC, Phagwara.”

From the above facts, it is prima facie apparent that the provisions of Section 42 of the NDPS Act have not been complied with. The same is a strong arguable point in favour of the present petitioner and there is every likelihood that the petitioner may be acquitted on the said aspect. However, this Court does not wish to give any final opinion and the said aspect would be finally adjudicated during the course of trial. Alongwith the petitioner, five other persons were also apprehended from the house of

Santokh Singh and four out of the five persons i.e. Amanpreet Singh @ Aman, Sarabjit Singh @ Sabi, Harvinder Singh @ Binda and Barinder Singh @ Bikky have been granted regular bail by the Judge, Special Court, Kapurthala and the orders regarding the same have been annexed as Annexures P-6 to P-9 with the paper book. The petitioner is in custody since 14.12.2021 and investigation is complete and challan has been presented and out of 11 prosecution witnesses, none have been examined as yet and thus, the conclusion of trial is likely to take time. The petitioner is stated to be not involved in any other case under the NDPS Act.

Keeping in view the abovesaid facts and circumstances, this Court deems it appropriate to grant the concession of regular bail to the petitioner. Further, this Court proposes to impose such conditions that would meet the object of Section 37 of the NDPS Act, 1985.

Accordingly, the present petition is allowed and the petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate, subject to him not being required in any other case. The petitioner shall also abide by the following conditions:-

1. The petitioner will not tamper with the evidence during the trial.
2. The petitioner will not pressurize/intimidate the prosecution witness (s).
3. The petitioner will appear before the trial Court on the date fixed, unless personal presence is exempted.
4. The petitioner shall not commit an offence similar to the offence of which he is an accused, or for commission of which he is suspected.

5. The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer or tamper with the evidence.

In case of breach of any of the above conditions, the prosecution shall be at liberty to move an application for cancellation of bail before this Court.

However, nothing stated above shall be construed as an expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail application.

All the pending miscellaneous applications, if any, stand disposed of in view of the abovesaid judgment.

24.11.2022

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No