

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

212

CRM-M-16928-2022
Date of decision: 05.07.2022

SUNIL ALIAS CHECHI

....Petitioner

Versus

STATE OF PUNJAB

...Respondent

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

Present : Mr. Shiva Khurmi, Advocate
for the petitioner.

Mr. Karanbir Singh, AAG, Punjab.

VINOD S. BHARDWAJ. J. (ORAL)

1. The present petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the petitioner in case FIR No.22 dated 10.02.2022 registered under Sections 21, 22 and 29 of the Narcotics Drugs and Psychotropic Substances Act, 1985 at Police Station Garhshankar, District Hoshiarpur.

2. The FIR in the instant case has been got registered on the statement of Inspector Rajiv Kumar and the operative part of the same is extracted as under:-

“Head Munshi, Police Station Gharshankar. Today I INSP/SO, SI Surinder Singh 121/Jal, ASI Rashpal Singh 1159, ASI Satpal 1349, Ct. Sandeep Minhas 1092, PHG Charanjit Singh 26772, PC Kehar Singh 26711 were

present at Binewal on VIP duty, that a Special Informant gave an information separately that at this time, Vikas @ Vicky son of Davinder singh alongwith his wife Shivani, residents of Binewal, who are doing smuggling of intoxicant in Punjab and Himachal Pradesh and at this time in their custody huge quantity of intoxicant can be found. On which, ASI Mahender Pal 475, ASI Balbir Singh 520, L/HC Navneet Kaur 9/73, who were also present on VIP duty, who also, after completion of VIP duty, were included in the party and house of Vikas @ Vicky was raided, who was about to leave on his Activa Number PB-24-C-5083 alongwith his wife, who, on being controlled by the INSP/SHO with the help of companion employees, asked name and address. The boy told his name as Vikas Singh @ Vicky son of Davinder singh and the girl told her name as Shivani wife of Vikas Singh @ Vicky resident of Binewal, Police Station Garshankar and before conducting their search, Narinder Singh Aujla, Deputy Superintendent of Police, Garshankar was requested telephonically to come on the spot, who after about 10 minutes, came on the spot, who while introducing himself told Vikas @ Vicky and Shivani that I Narinder Singh Aujla, PPS, am posted as Gazetted Officer at Sub Division Gharshankar. I am having doubt that you are having intoxicant material due to which your search has to be conducted. You are having a legal right that you can get your search conducted from some other Gazetted Officer or Magistrate, which can be arranged on the spot. Both in one voice said that we have trust on you and you can conduct our search. On which, separate memo of consent statements were written. On which, on the instructions of DSP, efforts were made to join a public witness in the party. Everybody, being resident of the village, expressed their helplessness. On which, I INSP, in the presence of the DSP and in front of the companion

employees, conducted search of Vikas @ Vicky as per procedure. From the right pocket of the pant worn by Vikas @ Vicky, 25 intoxicant injections, on which no label is mentioned, were recovered. A separate parcel of which was prepared and sealed with the seal of letters R.K and from the left pocket of the pant, 100 grams heroin like material in polythene packet was recovered, the weight of which was done on the spot with the computerized weighing machine. By preparing separate parcel alongwith polythene envelope, sealed with the seal of R.K. The abovesaid both the parcels were sealed by the DSP Sahib with his seal N.S. In the same manner, search of Shivani wife of Vikas @ Vicky was got conducted from L/HC Navneet Kaur 9/73 while keeping her honour in view. From the polythene packet tied with the belt (Nefa) of the salwar worn by Shivani, 25 intoxicant injections without label were recovered. By preparing a separate parcel of the same as well, the same were sealed with my seal R.K and DSA Sahib sealed with his seal N.S. On the spot, the sample seals were prepared. The DSP Sahib kept his seal with him and I INSP/SHO, after use, handed over my seal to SI Surinder Singh. On the spot, the dicky of Activa Number PB-24-C-5083 was opened and checked, from which drug money of Rs. 3,27,000/- of Indian currency notes were recovered. All the three parcels recovered from abovesaid sealed with seal of RK/NS alongwith with drug money of Rs. 3,27,000/-, Activa Number PB-24-C-5083 were taken into police possession vide recovery memo as evidence. On the memo, witnesses put their signatures. The DSP Sahib verified the same. Vikas Singh @ Vicky alongwith his wife Shivani by keeping with them 25/25 intoxicant injections and 100 grams of heroin type intoxicant material and Rs. 3,27,000/- drug money, have committed offence under Sections 21, 22-61-85 NDPS Act, on which, after writing

ruqa, the same is sent to the police station through ASI Rashpal Singh 1159 for registration of a case. After registration of the case, its number be informed. Information be sent to the Control Room. Special reports be issued. I, INSP am busy in investigation on the spot. Sd/- Rajiv Kumar, INSP, SHO, Gharshankar. Dated 10.02.2022.”

3. Learned counsel contends that the recovery in question has been effected from co-accused Vikas @ Vicky and Shivani who was found in conscious possession of 50 intoxicating injections without label and 100 grams of Heroin along with cash of Rs. 3,27,000/-. It is contended that the name of the petitioner cropped up in the disclosure of the said co-accused whereupon he was taken in custody on 11.02.2022. However, no recovery was effected from the petitioner during the investigation. It is contended that even though one more FIR bearing FIR No. 67 dated 28.06.2017 registered under Section 18 of the NDPS Act, 1985 at Police Station Moti Nagar, District Police Commissionerate Ludhiana has been registered against the petitioner, however, he is already on bail in the said case.

4. Learned counsel for the petitioner further contends that the disclosure statement of the co-accused Vikas @ Vicky has not led to any recovery from the petitioner and as such is inadmissible in evidence against the petitioner being in terms of Section 27 of the Evidence Act.

5. Learned counsel appearing on behalf of the respondent-State of Punjab does not controvert the aforesaid fact that recovery has not been effected from the petitioner and was rather effected from the co-accused. It is pointed out that investigation in the case is not complete and challan has not been filed so far.

6. I have heard learned counsel appearing on behalf of the respective parties and have gone through the record with their assistance.

7. Without examining the merits of the instant case and taking into consideration, the absence of recovery from the petitioner, the nomination of the petitioner on the basis of a disclosure statement made by the co-accused as well as the stage of investigation along with period of custody already undergone, I deem it appropriate to enlarge the petitioner on bail to the satisfaction of the trial Court.

8. The instant petition is allowed and the petitioner is ordered to be released on bail on his furnishing requisite bail bond/surety bond to the satisfaction of the Trial Court/Duty Magistrate, concerned.

9. It is made clear that the petitioner shall not extend any threat and shall not influence any prosecution witnesses in any manner directly or indirectly.

10. The observation made hereinabove shall not be construed as an expression on the merits of the case and the trial Court shall decide the case on the basis of available material.

The petition is allowed.

(VINOD S. BHARDWAJ)
JUDGE

JULY 05, 2022
vishal sharma

Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*