

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-17923-2022 (O&M)
Date of decision: 06.05.2022

Amarjit Kaur @ Jeeta

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Vipul Jindal, 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.18 dated 30.01.2021 under Sections 21(c), 25, 29 of NDPS Act and Section 25 of Arms Act, registered at Police Station STF Phase-IV, District SAS Nagar (Mohali).

Learned counsel for the petitioner submits that petitioner Amarjit Kaur @ Jeeta is wife of Joginder Singh @ Jagga, who was earlier involved in FIR No.199 dated 10.10.2020 under Sections 21 & 29 of NDPS Act, registered at Police Station Sadar Batala, District Batala and was granted regular bail vide order dated 10.03.2022 passed in CRM-M-5366-2021. In the said petition,

husband of the petitioner-Joginder Singh @ Jagga set up a defence that on an earlier occasion, he filed CRWP-5324-2020 levelling allegations against DSP Balbir Singh Sandhu that he is likely to be involved in a case under NDPS Act at his instance and later on, FIR No.199 was registered against him, in which DSP Balbir Singh Sandhu was the Gazetted Officer. It is further submitted that the petitioner, who is first offender and is not involved in any other case, was involved in present FIR No.18, for the reason that she is wife of Joginder Singh @ Jagga.

Learned counsel further submits that in the present FIR, registered on 30.01.2021 at 10.45 hours, it is recorded that at 03.07 a.m., LR/ASI Rohit Sharma informed SI Nirmal Singh that Joginder Singh @ Jagga, who is confined in Central Jail, Amritsar, is doing the business of selling heroin and his wife/petitioner Amarjit Kaur @ Jeeta is also involved in the said business. On 29.01.2021, some unknown persons have supplied huge quantity of heroin to the petitioner and if a raid is conducted, huge quantity of heroin can be recovered. Thereafter, ASI Rohit Sharma informed DSP Vavinder Kumar to come at the spot and a team reached at the spot and conducted raid at house of Joginder Singh @ Jagga, where petitioner Amarjit Kaur @ Jeeta was found along with her children and maid. In the supervision of DSP Vavinder Kumar, interrogation of the petitioner was conducted, who made disclosure statement (Annexure P-5) that heroin is concealed in the bonnet of car bearing registration No.CH-01-AR-2202. It is submitted that this disclosure statement bears the

complete details of FIR No.18 and this memo was signed by ASI Rohit Sharma, ASI Kulwinder Singh and SI Nirmal Singh and despite the fact that DSP was present at the spot, he had not signed the same.

Learned counsel has referred to recovery memo of heroin (Annexure P-6), which was signed by DSP Vavinder Kumar, ASI Kulwinder Singh, ASI Rohit Sharma, Lady Constable Manjinder Kaur and SI Nirmal Singh. Even in this memo, details of the FIR have been given. Again a reference is made to recovery memo of a pistol and some ammunition, which was signed by ASI Kulwinder Singh and ASI Rohit Sharma, however, neither DSP Vavinder Kumar nor Lady Constable Manjinder Kaur signed the same. Learned counsel has further referred to another document, prepared at the spot i.e. recovery memo of Rs.25,700/-, stated to be drug money, to submit that this document is typed one, in which FIR No.18 is typed in the same font, in which document is prepared and this document is signed by ASI Kulwinder Singh in Punjabi, though in some documents, he signed in English along with ASI Rohit Sharma. Even on this document, DSP had not signed, though he was allegedly present at the spot. Similarly, recovery of car No.CH-01-AR-2202, is also a typed document with complete details of FIR and signatures of DSP are not there on the said document.

Learned counsel has also referred to certain other documents, which are prepared at the spot in handwriting regarding the recovery as well as statement of DSP Vavinder Kumar recorded under Section 161 Cr.P.C., in

which he stated that all the documents referred to above were prepared in his presence, though nothing is stated as to why he had not signed the same, therefore, presence of the DSP at the spot is doubtful. Learned counsel has next referred to ruqa (Annexure P-1), which was sent at 8.45 a.m., after completing all the investigation at the spot and preparing the documents, referred to above, for registration of FIR. Learned counsel submits that a perusal of ruqa would show that though it is stated that at 3.07 a.m., LR/ASI Rohit Sharma gave information, as noticed in the FIR and in presence of DSP Vavinder Kumar, raid was conducted and petitioner made disclosure statement and thereafter, recovery of 1300 grams of heroin, some firearm and ammunition was effected. It is argued that ruqa was sent at 08.45 a.m. for registration of FIR and FIR was registered at 10.45 a.m. and there was no occasion for the Investigating Officer/DSP to record complete details of FIR No.18 in the documents prepared at the spot, much prior to sending ruqa and on some of the documents, DSP had not signed, which shows that these were prepared later on.

Learned counsel has next argued that involvement of the petitioner is only on account of the fact that her husband is involved in some other FIRs and had levelled allegations against DSP Balbir Singh Sandhu and on his asking, husband of the petitioner Joginder Singh @ Jagga is repeatedly involved in the cases. It is further submitted that the petitioner is in custody for the last 01 year, 02 months and 29 days and there is no one to look after the children, as her husband is already in judicial custody.

Learned counsel has referred to judgment of the Hon'ble Supreme Court in **Smt. Nandini Satpathy Vs. P.L. Dani (Criminal Appeal No.101 of 1978)**, in which it is held that the police must invariably warn and record the fact about the right to silence against self-incrimination and when the accused is literate to take his written acknowledgment. In context of Article 20(3) of the Constitution of India, the Hon'ble Supreme Court has observed that an assurance of awareness and observation of right of silence is given to an accused.

Learned counsel has also argued that the information was sent by ASI Rohit Sharma under Section 42 of NDPS Act, as ASI Rohit Sharma being the local rank official was not competent to comply with the provisions of Section 42 of NDPS Act, therefore, it will be a matter of trial whether provisions of Section 42 of NDPS Act were properly complied with or not. In this regard, learned counsel has referred to 2nd proviso to Section 42 (1) of NDPS Act, which reads as under: -

“Provided further that if such officer has reason to believe that a search warrant or authorization cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.”

In compliance thereof, DSP Vavinder Kumar had not recorded any ground of his belief for raiding house of the petitioner at midnight.

Learned State counsel has filed the custody certificate in the Court today, according to which, the petitioner is in custody for the last 01 year, 02 months and 29 days; charges were framed on 13.10.2021 and out of total 26 prosecution witnesses, none has been examined so far. It is, however, submitted that detail of the FIR in the documents was given because the information was received by the police officials at 03.00 a.m., which was shared by ASI Rohit Sharma with SI Nirmal Singh and then to DSP Vavinder Kumar, therefore, details of the FIR were mentioned, however, FIR number was entered with pen later on.

However, on a Court query, learned State counsel could not dispute that two documents, which are typed documents giving the details of FIR No.18, were also prepared at the spot, however, these documents do not bear the signatures of DSP, who was present at the spot.

In reply, learned counsel for the petitioner has additionally argued that very fact that Section 21 (c) of NDPS Act is mentioned in these documents, though at some places, FIR No.18 was later on added with pen as well as provisions of Arms Act are mentioned, would reflect that secret information was received by the police only with regard to some narcotic substance and there was no secret information leading to Arms Act as well as there was no information that recovery would be falling under commercial quantity,

therefore, adding of Section 21 (c) of NDPS Act in anticipation, while preparing all those documents, much prior to sending of ruqa, raises a suspicion about the investigation.

After hearing learned counsel for the parties, without commenting anything on merits of the case and considering 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 her bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate, concerned.

Petition is disposed of.

[ARVIND SINGH SANGWAN]
JUDGE

06.05.2022

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No