

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M-19443-2022

Reserved on: 02.09.2022

Pronounced on : 08.12.2022

Sudesh Kumar @ Shesha

... Petitioner

VS.

State of Punjab

... Respondent

CRM-M-28844-2022

Sanjiv Kumar @ Sanju

... Petitioner

VS.

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Ms. Simsi Dhir Malhotra, Advocate (in CRM-M-19443-2022)
Mr. AV Bhatti, Advocate (in CRM-M-28844-2022)
for the petitioner(s)

Mr. Rajiv Verma, DAG Punjab

Sandeep Moudgil, J. (Oral)

This order shall dispose of the above-captioned two criminal miscellaneous petitions wherein the petitioner(s) seeks grant of regular bail in case FIR No.16 dated 01.02.2020 under Sections 15 & 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station Tanda, District Hoshiarpur. For the sake of facts and order, CRM-M-19443-2022 is treated as the lead case.

Learned counsel for the petitioner contends that the petitioner was on interim bail but subsequently, on receipt of FSL report, was taken into custody. FSL report has been received, as per which, the contents of

‘Alprazolam’ to the extent of 0.21% were found. As per the FIR, 170 grams of intoxicant powder was recovered from the left pocket of the petitioner. The petitioner, alongwith co-accused, filed a Quashing Petition before this Court, vide CRM-M-41918 of 2021 which was ordered to be dismissed-as-withdrawn with the liberty, to raise all the pleas before the learned Magistrate, vide order dated 6.10.2021.

It is contended that as per FIR, an information was received in the police station on 1.2.2020 at 10:13 hours and entry was made in the daily diary on 1.2.2020 at 10:13 PM, whereas ruqa was sent at 9:50 PM, after drafting consent memo and effecting recoveries. Section 50 of the Act is also violated, as recovery was from pocket of petitioner and offer was not given in the presence of Judicial Magistrate or Gazetted Officer. The petitioner was facing one case at Jammu in the Court of Learned Sessions Judge at Janipur, Jammu and had appeared in the Court on 31.1.2020. It is averred that the petitioner is patient of Recurrent Umbilical Hernia and remained admitted in the Arora Nursing Home at Phillaur and was operated on 21.1.2020 and discharged after operation on 27.1.2020.

It is further urged that petitioner was to attend the Court at Jammu on 31.1.2020, and he was not in a position to go alone and he procured assistance of Sukhpal Kumar @ Rocky, his brother-in-law and Satish Kumar @ Bunty friend of Sukhpal Kumar. They were traveling from Phillaur to Jammu in Vehicle Innova bearing Registration No.PB-46H-0037, and when vehicle reached at Tanda from Jammu, then vehicle of petitioner and other accused was hit by a Government police vehicle at Village Uchi Bass and some altercation took place. The police officials took the vehicle

and petitioner and other accused alongwith them at about 8:00 PM on 31.1.2020. On 1.2.2020 at about 8:20 PM, complaint was lodged with Control Room at No.112 by wife of petitioner Sudesh Kumar.

It is further stated by the petitioner that in the complaint made by his wife, it was stated that her husband and others were detained in the Police Station Tanda and were mercilessly beaten up. Then the present FIR was registered against the petitioner and as per FIR, the occurrence was narrated of 1.2.2020 at 00:00 hours and information was allegedly received in the Police Station on 1.2.2020 at 22:13 hours (10:13 PM) and entry in the Roznamcha, vide entry No.43 was made on 1.2.2020 at 22:13:10 hours. So, from the said facts, it is clear that after the complaint lodged by the wife of petitioner, case was registered and Ruqa is sent on 1.2.2020 at 9:50 PM.

Learned counsel for the petitioner-accused Sanjiv Kumar @ Sanju contended that the petitioner had no connection with other co-accused. The Village Panchayat of Ganna Pind visited the Police Station Tanda on 1.2.2020 at 11:00 AM and asked the police to release the petitioner. As per allegations, petitioner and other accused were apprehended from Truck No.JK-03-6825, and this truck does not belong to any of the petitioners and secondly, the petitioner attended the Court at Jammu and their vehicle travelled back from Jammu had passed through Mansro Toll Plaza. It is further submitted that no other FIR is pending against the petitioner except the case as mentioned above in the Court of Principle Sessions Judge at Jammu. That due to beating by the police on the alleged day of occurrence, earlier operation became ineffective and petitioner was advised for fresh operation.

It is further submitted that the co-accused Sukhpal Kumar @ Rocky and Satish Kumar @ Bunty have already been granted bail by this Court on 20.4.2022 in **CRM-M No.54026 of 2021 (Sukhpal Kumar @ Rocky & Anr. vs. State of Punjab)**. The petitioner surrendered before the Court on 1.2.2022 and has now applied for regular bail.

Learned State counsel opposed the bail petitions on the ground that allegations against the both the petitioners are serious and they cannot be granted bail, because the offence is heinous in nature. So, he has prayed that bail applications be dismissed. As per the custody certificate dated 04.08.2022, the period of custody undergone by the petitioner Sudesh Kumar @ Shesha is 8 months and 14 days and by the petitioner, as undertrial, is 7 months and 17 days.

Learned counsel for the petitioners have raised the following contentions:-

- (a) No drug detection kit was shown at the time of arrest of the petitioners as nowhere in the FIR or in the challan it is mentioned that at the spot, the investigating officer or the police officials were present along with said kit.
- (b) As per the FIR, the time of occurrence is 01.02.2020 at 00.00 hours, information received in police station on 01.02.2020 at 10.13 pm and entry in rojnamcha, vide entry No.43 on 01.02.2020 at 10.13 pm and as such it is apparent that it was only after the petitioner's wife's complaint lodged with the Control Room, at No.112 at 8.20 pm approximately, regarding illegal detention of her husband that the present FIR was planted

and that none of the petitioner and/or the other co-accused was the owner of the truck mentioned in the occurrence.

- (c) There is violation of principle of natural justice as the provisions of Section 15 & 22 of the NDPS Act. It is contended the secret information was not reduced into writing and not sent to the superior officer as required under Section 42(2) of the NDPS Act; the petitioner and co-accused were apprehended initially by an incompetent officer; the entry in rojnamcha/consent memo is fatal to the prosecution story. (Ref. **(i) State of Punjab vs. Balbir Singh 1994(1) RCR 736**, **(ii) State of Punjab vs. Baldev Singh 1999(3) RCR 533**, **(iii) Darshan Singh vs. State of Haryana 2016(3) RCR 333**).
- (d) Section 50 of the NDPS Act has been violated as offer was not given in the presence of the Gazetted Officer or Magistrate and only a joint offer was given subsequently, which is defective, and the punishment under the Statute is very harsh in nature and as such the prescribed procedure has to be meticulously followed as has been held by the **State of Rajasthan vs. Parmanand & Anr. 2014(2) RCR 40**.
- (e) The probable causes for believing that the accused is not guilty of the offence charged and this reasonable ground contemplated under Section 37 of the NDPS Act in turnpoints of existence of such facts and circumstances as are sufficient in themselves to justify recording of satisfaction that the accused is not guilty of the offence charged. Reliance has been placed on the judgment

of this Court in Sukhwinder Singh @ Vicky vs. State of Punjab, 2021 (1) RCR 177.

Having heard learned counsel for the parties and going through the record, I am of the considered view that the petitioners do not deserve the concession of regular bail at this stage.

As per FSL report from the possession of petitioner Sudesh Kumar @ Shesha, the contents of 'Alprazolam' were found to the extent of 0.21%. However, 170 grams of intoxicant powder containing salt 'Alprazolam' was recovered from the co-accused on interception of truck No.JK-03-6825 on 1.2.2020.

Learned counsel for petitioner has argued that drug has been foisted and planted upon the accused. The defence so raised by counsel for the petitioner are all the facts which are to be proved at the time of trial. The presence of petitioner is not doubtful on 1.2.2020, at Tanda, as he himself states that accident had taken place with a Government police vehicle. Even, the passing of the Innova vehicle from the National Highways, it cannot be concluded at this stage, that the petitioner, alongwith his brother-in-law and his friend, who are also co-accused, in this case were traveling in that Innova car. Be that as it may, these contentions of petitioner will be dealt with, after evidence in the main trial is recorded and at this stage, is a matter of trial as the recovery prima facie falls under the commercial quantity and there is bar to release the accused persons on bail in offences involving commercial quantity under NDPS Act, there seems no change of circumstances nor any ground of parity has been pleaded with other co-accused, who were granted bail by this Court on 20.4.2022, on the ground that contraband effected from

co-accused fall under non-commercial quantity. The allegations against the petitioners are serious and in these circumstances, they are not entitled to the benefit of regular bail.

In view of the above, I do not find any merit in these petitions and the same are accordingly dismissed.

08.12.2022
V.Vishal

(Sandeep Moudgil)
Judge

- 1. Whether speaking/reasoned?*
- 2. Whether reportable?*

Yes/No
Yes/No