

221

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

CRM-M-20617-2022 (O&M)

Date of decision : 12.09.2022

Rajinder Singh @ Bholu @ Harpal Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Sidhant Vermani, Advocate for the petitioner.

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

VIKAS BAHL, J. (ORAL)

This is the second petition filed under Section 439 of Cr.P.C. for grant of regular bail to the petitioner in FIR No.41 dated 06.02.2020 registered under Sections 21/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 read with Sections 307/148/149 of the Indian Penal Code, 1860 and Section 25 of the Arms Act, 1959 at Police Station Sadar Amritsar, District Police Commissionerate, Amritsar.

Learned counsel for the petitioner has submitted that the petitioner was not named in the FIR nor any recovery has been effected from him and the petitioner has been solely implicated on the basis of the disclosure statement of the co-accused. It is further submitted that the alleged recovery has been effected from co-accused Gurpreet Singh @

Mani, who has already been granted the concession of regular bail vide order dated 17.03.2022 passed in CRM-M-17503-2020.

Learned counsel for the petitioner has further relied upon the judgment passed by the Hon'ble Supreme Court in ***Tofan Singh Vs. State of Tamil Nadu***, reported as ***2021(1) RCR (Criminal) 1***, an order passed by Coordinate Bench of this Court dated 17.06.2020 in CRM-M-12051-2020 titled ***"Mewa Singh Vs. State of Punjab"***, and an order of another Coordinate Bench dated 16.07.2021 passed in **CRM-M-12997-2020** titled as ***"Daljit Singh Vs. State of Haryana"*** to contend that in such like cases if a person has only been proceeded against on the basis of disclosure statement of co-accused and no recovery has been effected from the petitioner, then he should be granted the concession of regular bail. It is further submitted that the petitioner has been in custody since 08.02.2022 and although, initially, there were 12 witnesses but now the supplementary challan has been presented against the present petitioner on 20.04.2022 and in the same, there are total 25 witnesses, out of which, none have been examined and thus, the conclusion of trial is likely to take time.

Learned State counsel, on the other hand, has opposed the present application for regular bail and has submitted that the petitioner is involved in one case also. The other facts as mentioned by learned counsel for the petitioner however have not been disputed by learned State counsel.

Learned counsel for the petitioner, in rebuttal, has submitted that the petitioner is already on bail in the said case and has further relied upon the judgment of Hon'ble Supreme Court in ***"Maulana Mohd. Amir Rashadi vs. State of U.P. and another"***, reported as ***2012 (2) SCC 382*** to

contend that the facts and circumstances of the present case are to be seen and the bail application of the petitioner cannot be rejected solely on the ground that the petitioner is involved in another case. The relevant portion of the said judgment is reproduced hereinbelow:-

“As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.”

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

It is not in dispute that the petitioner has not been named in the FIR nor any recovery had been effected from him. The petitioner has been implicated solely on the basis of the disclosure statement of the co-accused. As per the law laid down in the cases of ***Tofan Singh, Mewa Singh*** and ***Daljit Singh (supra)***, the disclosure statement made before the police is inadmissible in evidence, moreso, when no recovery has been effected from the petitioner thereafter. The co-accused Gurpreet Singh, from whom the recovery has been effected, has already been granted the concession of regular bail vide order dated 17.03.2022 passed in CRM-M-17503-2020. The relevant portion of the said judgment is reproduced hereinbelow:-

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

The first argument raised by learned counsel for the petitioners is to the effect that although as per the

*FIR, information had been received at the police station at 5: 17 AM on 06.02.2020, the FIR contained the details with respect to the search conducted and also the fact that the ruqa had been sent after the entire recovery process had been completed. Perusal of the consent memo (Annexure P-13) (vernacular at page 23), which even as per the prosecution case, had been prepared prior to the recovery, would show that the number of the FIR had already been typed in the same. The Division Bench in **Didar Singh @ Dara's** case (supra) had observed 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 & Ors. 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.

xxx xxx xxx

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.”

*A coordinate Bench of this Court in **Ajay Kumar @ Nannu's** case (supra) had held as under:-*

*“(iii) that mentioning of number of FIR and additional offences in the recovery memo shows manipulation and fabrication of recovery memo subsequently in the police station which denudes recovery memo of any sanctity and strikes out integrity and shatters credibility of the prosecution version and entitles the petitioners to grant of bail. In support of his arguments Mr. Vipul Jindal, learned Counsel for the petitioners has placed reliance on the observations in judgments passed in **Ajay Malik Vs. State of U.T. Chandigarh : 2009(3) RCR (Criminal) 649 (P&H); Didar Singh @ Dara Vs. State of Punjab : 2010(3) RCR (Criminal) 337 (P&H);** where mentioning of subsequent details in recovery memo was held to affect sanctity/credibility of recovery memo and **Criminal Appeal No.1809 of 2009 titled as 'Ram Chander Sharma @ Pandit Vs. State (NCT of Delhi)' decided on 01.12.2020 (SC); CRM-M-38153-2019 (O&M) titled as 'Satish Kumar Vs.***

State of Punjab' decided on 11.02.2020; CRM-M-42370-2019 (O&M) titled as 'Tarsem Lal Vs. State of Punjab' decided on 17.09.2020; CRM-M-44921-2019 titled as 'Gurdeep Singh Vs. State of Punjab' decided on 18.02.2020; CRM-M-32615-2018 titled as 'Rinku Singh Vs. State of Punjab' decided on 07.08.2018; CRM-M-61999-2018 titled as 'Jatinder Vashisht Vs. State of Punjab' decided on 26.03.2019; CRM-M-34433-2019 titled as 'Harvinder Singh @ Shammi Vs. State of Punjab' decided on 25.11.2019; CRM-20778-2018 in CRA-S2212- SB-2016 titled as 'Kashmir Singh @ Koki Vs. State of Punjab' decided on 24.01.2019; CRM-19587- 2019 in CRA-S-2884-SB-2016 titled as 'Charno Vs. State of Punjab' decided on 16.08.2019; CRM-M36504-2020 (O&M) titled as 'Rajandeep Singh @ Ghughi Vs. State of Punjab' decided on 28.01.2021 and Mustkeem @ Sirajudeen Vs. State of Rajasthan (SC): 2011(3) RCR (Criminal) 766 where bail was granted/ suspension of sentence was allowed on this ground.

xxx xxx xxx

16. In Mustakeem @ Sirajudeen Vs. State of Rajasthan : AIR 2011 SC 2769 it was held by Hon'ble Supreme Court that if the recovery memos were prepared at the Police Station itself then the same would lose its sanctity. In Ajay Malik Vs. State of U.T. Chandigarh : 2009(3) RCR (Criminal) 649 (P&H) it was held by this Court that presence of FIR details on recovery memos etc. leads to two inferences: either the FIR was registered prior to the alleged recovery of

*contraband or the number of FIR was inserted in these documents after its registration in both the situations it seriously reflects upon the integrity of the prosecution version. This view was upheld and reiterated by the Division Bench of this Court in **Didar Singh @ Dara Vs. State of Punjab : 2010 (3) RCR (Criminal) 337 (P&H)** and mentioning of such details in recovery memo was held to affect sanctity/credibility of recovery memo. In **Criminal Appeal No.1809 of 2009 titled as 'Ram Chander Sharma @ Pandit Vs. State (NCT of Delhi)' decided on 01.12.2020 (SC); CRM-M-38153-2019 (O&M) titled as 'Satish Kumar Vs. State of Punjab' decided on 11.02.2020; CRM-M-42370-2019 (O&M) titled as 'Tarsem Lal Vs. State of Punjab' decided on 17.09.2020; CRM-M-44921-2019 titled as Gurdeep Singh Vs. State of Punjab' decided on 18.02.2020; CRM-M-32615-2018 titled as 'Rinku Singh Vs. State of Punjab' decided on 07.08.2018; CRM-M-61999-2018 titled as 'Jatinder Vashisht Vs. State of Punjab' decided on 26.03.2019; CRM-M-34433-2019 titled as 'Harvinder Singh @ Shammi Vs. State of Punjab' decided on 25.11.2019; CRM-20778-2018 in CRA-S2212-SB-2016 titled as 'Kashmir Singh @ Koki Vs. State of Punjab' decided on 24.01.2019; CRM-19587- 2019 in CRA-S-2884-SB-2016 titled as 'Charno Vs. State of Punjab' decided on 16.08.2019; CRM-M-6504- 2020 (O&M) titled as 'Rajandeep Singh @ Ghughi Vs. State of Punjab' decided on 28.01.2021 and Mustkeem @ Sirajudeen Vs. State of Rajasthan (SC): 2011(3) RCR (Criminal) 766 bail was***

granted/suspension of sentence was allowed on this ground.

xxx xxx xxx

20. In view of the above, the petitions are allowed and the petitioners are ordered to be released on regular bail on furnishing of personal bond and bond of one surety in heavy amount to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.”

*Similarly, a coordinate Bench of this Court in **Rajandeep Singh @ Ghughi's** case (supra) had held as under:-*

*“In this backdrop, the submission made by Ld. Counsel for the petitioner is that in view of the decision of the Supreme Court in **Ram Chander Sharma @ Pandit v. State (NCT Delhi) Criminal Appeal No. 1809 of 2009**, the existence of the FIR on the recovery memo when the FIR was not itself drawn up would point to the case against the petitioner being a fabricated one. Reliance has thereafter been placed upon an earlier decision of this Court in **Ajay Malik v. State of U.T. Chandigarh, 2009(3) RCR (Crl.)649 (P&H)** which was thereafter followed by the Division Bench in the decision of **Didar Singh @ Dara v. State of Punjab, 2010(3) RCR (Criminal) 337 (P&H) (DB)**. Various Benches of this Court have subsequently granted bail to such accused persons in view of these decisions wherever number of the FIR was seen to have been noted down in the documents purported prepared before registration of the FIR itself.*

[(i) CRM-M-38153-2019 titled Satish Kumar v.

State of Punjab;

(ii) CRM-M-42370-2019 titled Tarsem Lal v. State of Punjab;

(iii) CRM-M-44921-2019 titled Gurdeep Singh v. State of Punjab;

(iv) CRM-M-32615-2018 titled Rinku Singh v. State of Punjab;

(v) CRM-M-61999-2018 titled Jatinder Vashisht v. State of Punjab;

(vi) CRM-M-34433-2019 titled Harvinder Singh @ Shammi v. State of Punjab.]

Similarly in :-

(vii) CRM-20778-2018 in CRA-S-2212-SB-2016 titled Kashmir Singh @ Kokki v. State of Punjab; and

(viii) CRM-19587-2019 in CRA-S-2884-SB-2016 titled Charno v. State of Punjab, the benefit of suspension of sentence even in favour of the convicts was granted by this Court for the same reason, i.e. existence of the F.I.R. number on the Recovery Memo/ Documents prepared before registration of the F.I.R.”

xxx xxx xxx

[8] In addition, Ld. Counsel for the petitioner has separately relied upon an appropriate format of the Recovery Memo pertaining to Heroin in FIR No. 232 dated 24.09.2016, Police Station Chheharta Amritsar to demonstrate in what manner the relevant FIR number is to be shown. Perusal of the same goes to show that the recovery from the concerned accused Karan Singh @ Karan s/o Watan Singh was purportedly effected on 23.09.2016, but the relevant FIR No. 232 dated

24.09.2016 was separately entered on the margin which was totally distinct from the original contents with a separate/categorical noting that the memo in question pertains to the said FIR drawn up on the following day. The said document is now tagged as Annexure 'X' with the record. It would, therefore, be clear that such format was being followed by the Narcotic Cell Authorities of the area for more than three years prior to the apprehension of the petitioner in the present case, and so mentioning of the FIR number in the very beginning of the Recovery Memo as done in the present case, and not by way of a subsequent explanatory endorsement to indicate that it relates to the relevant FIR drawn up subsequently, would only go to support the contention raised on behalf of the petitioner.

xxx xxx xxx

[11] The petition is, therefore, allowed and the petitioner is directed to be released on bail to the satisfaction of the Ld. Trial Court/ Duty Magistrate, concerned."

Perusal of the above said judgments would show that Division Bench as well as coordinate Bench of this Court had considered the contention raised by learned counsel for the present petitioner to be one of the points while granting regular bail to the petitioner therein. Even in a case involving commercial quantity, it was observed that in such a situation only two inferences can be drawn, i.e., either the FIR was registered prior to the alleged recovery of contraband or the number of the FIR has been inserted in the document after its registration and both situations seriously reflect upon the integrity of

*the prosecution version and the same is a serious lapse in the prosecution case and creates a doubt in the prosecution theory. The coordinate Bench of this Court in **Rajandeep Singh @ Ghughi's** case (supra) had even explained as to how an entry was to be made with respect to the FIR which was entered into subsequently and it was observed that separate/categorical noting to the effect that FIR and its number having been mentioned, should be made. The same has not been done in the present case.*

The issue which has been raised in the above said case would also arise in the present case. Even a perusal of the signatures on the consent memo (vernacular at page 23) and a perusal of the recovery memo (vernacular at page 24) would show that the signatures of the same police official on both the said documents are completely different. The documents Annexure P-14 recovery memo (vernacular at page 24), Annexure P-15 ruqa (vernacular at page 25), Annexure P-16 memo handing over case property (vernacular at page 27), all were hand written whereas, the consent memo was typed. The plea of learned counsel for the petitioners to the effect that the said consent memo is a document which has been prepared subsequently after the recovery, thus, cannot be outrightly rejected and thus the question of its authenticity would be matter of trial.

Learned counsel for the petitioners has also raised the argument that a perusal of the FIR would show that the personal search of the petitioner had also been conducted and further the consent memo would show that the petitioners, even as per the case of the prosecution, were given a fourth option to get their search conducted from ASI Lakhwinder Singh. It is

submitted that giving of the the said option would be violative of the provisions of Section 50 of the NDPS Act.

The Hon'ble Supreme Court of India in S.K. Raju's case (supra) had observed as under:-

“The question which arises before us is whether Section 50(1) was required to be complied with when charas was recovered only from the bag of the appellant and no charas was found on his person. Further, if the first question is answered in the affirmative, whether the requirements of Section 50 were strictly complied with by PW-2 and PW-4.

xxx xxx xxx

PW-2 conducted a search of the bag of the appellant as well as of the appellant's trousers. Therefore, the search conducted by PW-2 was not only of the bag which the appellant was carrying, but also of the appellant's person. Since the search of the person of the appellant was also involved, Section 50 would be attracted in this case. Accordingly, PW-2 was required to comply with the requirements of Section 50(1). As soon as the search of a person takes place, the requirement of mandatory compliance with Section 50 is attracted, irrespective of whether contraband is recovered from the person of the detainee or not.

In the said case, the provisions under Section 50 of the NDPS Act were attracted despite the recovery having been made only from the bag of the appellant therein, since his personal search had been conducted. The same principle is applicable in the present case.

Further the learned counsel for the petitioners has relied upon the judgment of the Hon'ble Supreme Court

of India in **Parmanand's** case (*supra*) in which it was observed as under:-

“15. We also notice that PW-10 SI Qureshi informed the respondents that they could be searched before the nearest Magistrate or before a nearest gazetted officer or before PW-5 J.S. Negi, the Superintendent, who was a part of the raiding party. It is the prosecution case that the respondents informed the officers that they would like to be searched before PW-5 J.S. Negi by PW-10 SI Qureshi. This, in our opinion, is again a breach of Section 50(1) of the NDPS Act. The idea behind taking an accused to a nearest Magistrate or a nearest gazetted officer, if he so requires, is to give him a chance of being searched in the presence of an independent officer. Therefore, it was improper for PW-10 SI Qureshi to tell the respondents that a third alternative was available and that they could be searched before PW-5 J.S. Negi, the Superintendent, who was part of the raiding party. PW-5 J.S. Negi cannot be called an independent officer. We are not expressing any opinion on the question whether if the respondents had voluntarily expressed that they wanted to be searched before PW-5 J.S. Negi, the search would have been vitiated or not. But PW-10 SI Qureshi could not have given a third option to the respondents when Section 50(1) of the NDPS Act does not provide for it and when such option would frustrate the provisions of Section 50(1) of the NDPS Act. On this ground also, in our opinion, the search conducted by PW-10 SI Qureshi is vitiated. We have, therefore, no hesitation in

concluding that breach of Section 50(1) of the NDPS Act has vitiated the search. The conviction of the respondents was, therefore, illegal. The respondents have rightly been acquitted by the High Court. It is not possible to hold that the High Court's view is perverse. The appeal is, therefore, dismissed."

In the said case, PW-10 SI Qureshi had given a third option to the accused persons therein to be searched before PW-5 J.S.Negi who was a part of the raiding party. It was observed by the Hon'ble Supreme Court that the said option given to the accused was against the mandate of Section 50 of the NDPS Act and thus, the search conducted stood vitiated.

*State counsel has although very vehemently argued that the recovery in the present case is not on account of personal search and the said recovery was effected from the kit bag and the personal search of the petitioner was conducted subsequently, as is required to be conducted in every case and thus, the recovery from the kit bag do not stand vitiated on account of non compliance of Section 50 of the NDPS Act. In said regard, learned State counsel has referred to the judgment of the Hon'ble Supreme Court of India in **State of Punjab vs. Baljinder Singh reported as 2020(1) RCR (Criminal) 58.***

*Learned counsel for the petitioners in rebuttal has submitted that in **Baljinder Singh's** case (supra), recovery had been effected from the car involved therein and judgment of Hon'ble Supreme Court of India in **S.K. Raju's case** (supra) has not been considered in the said judgment.*

The aforesaid facts would clearly show that even

the question with respect to applicability of Section 50 of the NDPS Act to the present case is a matter of debate and raises arguable points.”

The petitioner is stated to be in custody since 08.02.2022 and there are as many as 25 witnesses, out of whom, none have been examined, thus, the trial is likely to take time.

Keeping in view the abovesaid facts and circumstances, and also in view of the law laid down in all the abovesaid judgments, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate and subject to him not being required in any other case.

However, it is made clear that in case, any act is done by the petitioner to threaten the complainant or any of the witnesses, then it would be open to the State to move an application for cancellation of bail granted to the petitioner.

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.

12.09.2022

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No