

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

.....

CRM-M-21391-2022
Date of Decision:10.8.2022

BIKRAM SINGH MAJITHIA

...Petitioner

Vs.

STATE OF PUNJAB

...Respondents

.....

CORAM: HON'BLE MR. JUSTICE M.S. RAMACHANDRA RAO
HON'BLE MR. JUSTICE SURESHWAR THAKUR

.....

Present: Mr. R.S.Cheema, Sr.Advocate assisted by
Mr.Damanbir Singh Sobti, Mr. Arshdeep Singh Cheema and
Ms.Tarannum Cheema, Advocates

... For petitioner

Mr. V.Giri, Senior Advocate assisted by
Mr.R.K.Rathore, Advocate
Mr.Gaurav Garg Dhuriwala, Senior DAG, Punjab
Mr.Shrirang Varma,Advocate

... for State of Punjab /Respondent

M.S. RAMACHANDRA RAO, J.

This is an application filed by petitioner seeking regular bail under Sec.439 Cr.P.C in case FIR No.0002 dt.20.12.2021 registered under Sec.25,27A and 29 of the Narcotics and Psychotropic Substances Act,1985 (for short 'the NDPS Act'), Police Station Punjab State Crime, SAS Nagar, Mohali.

The background facts

The petitioner is a politician and a senior member of the Akali Dal political party. He was a Member of the Punjab State Legislative Assembly closely related to a former Deputy Chief Minister of the State and also to a Member of Parliament.

In 2013, four FIRs were registered under the NDPS Act. They are:

S.No.	FIR No.	Date	Under Sections	Police Station
1.	45	3.3.2013	Sections 420,467,468,471 IPC, and Sections 21,61 of NDPS Act and Sections 25,54 and 59 of Arms Act.	Fatehgarh Sahib
2.	69	8.3.2013	Sections 21,22,61 of NDPS Act and Section 13 of FEMA	Gobindgarh
3.	69	16.4.2013	Sections 420,467,468,471 IPC, and Sections 21,22,61 of NDPS Act	Fatehgarh Sahib
4.	56	15.5.2013	379,411,473,120-B IPC and Sections 21,22,61 of NDPS Act	Banur

On the basis of the same, the Enforcement Directorate (ED) registered an ECIR No.ECIR JLZO/02/2013 dt.25.3.2013 against Jagdish Singh @ Bhola, Anup Singh Kahlon and others. During the course of investigation of the ECIR, the ED recorded in 2014-15 statements of Jagdish Singh @ Bhola, Maninder Singh @ Bittu Aulakh, Jagjit Singh Chahal among others.

In 2013, based on a letter by Sh.Shashikant, this Court registered CWP No.20359 of 2013 titled *Own motion vs. State of Punjab and others*, a PIL to check drug menace in the State of Punjab.

By that time, a Special Investigation Team (SIT) under the supervision of the Senior Superintendent of Police, Patiala was conducting investigation in the FIRs registered against Jagjit Singh Chahal, Maninder Singh @ Bittu Aulakh, Jagdish Singh@ Bhola and others and related FIRs.

Alleging unfairness of investigation by the SIT, Jagjit Singh Chahal filed CWP NO.88/2014, Maninder Singh @ Bittu Aulakh filed CRM-M-32827/2014 and Balchinder Singh, father of Jagdish Singh @

Bhola filed CWP No.342 of 2014 in this Court. They wanted transfer of investigation to the Central Bureau of Investigation.

These cases along with similar cases filed by others were decided by a Division Bench of this Court on 7.10.2015. The High Court rejected the prayer for transfer of investigation /investigation by the CBI. It constituted a Supervisory Investigation Team of three senior IPS Officers to further/reinvestigate the matter. All the investigating officers were directed to hand over all the case files to this Supervisory Investigation Team and identify missing links, lack of proof or the evidence which could be credible, but has not been collected or made part of the record for some obvious reasons.

Thereafter 10 more supplementary challans were filed under Sec.173(8) Cr.P.C.

But the petitioner was not arrayed as an accused in any of the above cases by the investigative agencies.

In the meantime, in CWP NO.20359 of 2013 , the PIL pending before this Court, an application was filed by an intervenor “Lawyers for Human Rights International” to investigate the matter on the basis of the statements of Jagjit Singh Chahal, Jagdish Singh@ Bhola and Maninder Singh@ Bittu Aulakh in relation to the complicity of the petitioner with the drug mafia.

A Special Task Force (for short ‘STF’) had been appointed by the then State Government in 2017 to deal with the drug menace in the State. It was headed by Sri Harpreet Singh Sidhu, IPS, ADGP, Punjab.

On 28.11.2017, this Court directed him to enquire into the allegations mentioned in the application and file a status report.

He was directed by this Court to file a status report on 31.1.2018 in CWP.No.20359-2013.

In his status report, Sri Harpreet Singh Sidhu, IPS (Head of the STF) referred to certain statements made under Sec.50 of the Prevention of Money Laundering Act,2002 by

- (i) Jagdish Singh@ Bhola (accused in case FIR No.56 dt.15.5.2013 under Sec.379/411/468/471/473/120B IPC and sections 21/22/25/25A/27 and 29 of NDPS Act of Police Station Banur) on 23.1.2014 and 24.1.2014;
- (ii) Jagjit Singh Chahal (accused in case FIR No.56 dt.15.5.2013) on 23.4.2014,24.4.2014,3.6.2014 and 9.2.2015;and
- (iii) Maninder Singh Aulakh @ Bittu (accused in case FIR No.56 dt.15.5.2013) on 6.8.2014,12.1.2015 and 13.1.2015.

These statements had been recorded by Sri Niranjana Singh, Deputy Director, Directorate Enforcement in ECIR/02/JLZO/2013 during the course of investigation in 2014-15 under the provisions of the Prevention of Money Laundering Act,2002.

Sri Harpreet Singh Sidhu, IPS opined that:

- (a) petitioner had association /close relationship with Satpreet Singh @Satta , Parminder Singh@ Pindi, Jagjit Singh Chahal,Maninder Singh Aulakh @ Bittu and Amrinder Singh @ Laddi;
- (b) that Jagdish Singh@ Bhola was allegedly involved in the drug trade in association with Jagjit Singh Chahal,Maninder Singh Aulakh @ Bittu, Amrinder Singh @ Laddi,Parminder Singh@ Pindi andSatpreet Singh @Satta;

(c) that the petitioner had a role in facilitating supply of pseudoephedrine to Satpreet Singh @Satta , Parminder Singh@ Pindi; and

(d) the matter regarding money transactions of petitioner with Jagjit Singh Chahal and others needs to be investigated further as also whether funds, if received, have been transferred abroad/received abroad and whether these have been converted into other assets by any of the persons/associates of those involved etc.

Copy of the report of the STF was handed over in a *sealed cover* to Niranjn Singh, Deputy Director, Enforcement Directorate to consider and proceed further in accordance with law. Another copy of the report was also handed over to the then Advocate General, Punjab for consideration at the hands of the State Government. It was directed that the Enforcement Directorate as well as the State Government shall submit their respective opinion-cum-Status report on the next date of hearing. This report was *resealed* and ordered to be kept in the custody of the Registrar (Judicial) of this Court.

The State of Punjab constituted a High Powered Committee consisting of the DGP, Punjab and the Additional Chief Secretary, Department of Home Affairs and Justice and it was informed to the Court on 15.3.2018.

The State filed on 23.5.2018 an opinion-cum-status report of the High Powered committee in a *sealed cover* alongwith the affidavit of the Additional Secretary, Department of Home Affairs and Justice, Punjab. It was taken on record by this Court.

The elections to the Legislative Assembly for the State of Punjab were scheduled to take place on 23.2.2022.

Just prior thereto, the then Advocate General, State of Punjab on 1-12-2021 gave legal opinion to the State that there was no embargo for law enforcement agencies to act on the *prima facie* findings of the 'Status Report' filed by the STF.

Sri S.Chattopadhyay, the then DGP, State of Punjab relied on the said legal opinion of the Advocate General and wrote on 20-12-2021 to the Director of Bureau of Investigation, Punjab, Chandigarh to register a case on the basis of the above status report submitted by Sri Harpreet Singh Sidhu, IPS (STF) in 2018 in CWP No.20359 of 2013 and CWP No.15916 of 2017.

The DGP stated that on it's basis, a cognizable offence is made out and in cases mentioned in the report and associated cases of drug trafficking, it is essential that the offences of Sec.25,27A and 29 of the NDPS Act, apart from additional offences which are indicated or may emerge later, need to be investigated in compliance of his directions through a Special Investigation Team. He stated that it is on record that many of the persons prosecuted in these cases have been convicted for offences under the NDPS Act by the Court of competent jurisdiction and therefore their involvement in such drug trafficking is well established.

According to the DGP, participating in the manufacture, processing, transport , sale, trafficking and distribution of narcotics is an offence; facilitating, abetting, conspiring, assisting and gaining financial benefit from such offences and profiting from and using such illegal proceeds and money received from such activities is an offence; using such money and profits in various business ventures and illegal activities are also offences under relevant laws and such actions themselves constitute a

cognizable offence. Intentional use of government machinery, including vehicles and security personnel and other Governmental facilities for assisting, facilitating and abetting drug trafficking and other related illegal activities is an offence. On the basis of the status report of the STF along with the opinion of the Advocate General, Punjab, the DGP stated that a cognizable offence is made out

On his direction the FIR No.0002 dt.21.12.2021 was registered.

The FIR referred to the above findings in the report of the STF and stated that as per the above findings, prima facie there is sufficient evidence on record to further investigate the role of the petitioner as regards the allegations and the information reveals commission of offences under Sec. 25,27A and 29 of the NDPS Act.

Events after filing of the FIR

After registration of the FIR on 20.12.2021, the petitioner filed an application for anticipatory bail which was dismissed by the Sessions Court on 24.12.2021.

He was however granted interim anticipatory bail on 10.1.2022 by this Court in CRM-M.No.54698 - 2021, but later it was dismissed on 24.1.2022.

Petitioner challenged the same before the Supreme Court in SLP (Crl) No.759/2022. It was also dismissed on 31.1.2022, but the petitioner was granted protection from arrest till 23.2.2022 and was permitted to surrender before the trial court on 24.2.2022 and apply for regular bail.

Petitioner surrendered on 24.2.2022 before the Special Court.

The investigative agency did not seek police remand of petitioner and filed an application on 24.2.2022 for judicial custody. It was granted and petitioner was sent to judicial custody.

Petitioner filed an application under Sec.439 Cr.PC before the Judge, Special Court seeking regular bail, but the same was dismissed on 25.2.2022.

Petitioner then approached the Supreme Court of India under Art.32 of the Constitution by filing W.P.No.(Crl) 124 of 2022 seeking quashing of the FIR No.002 dt.21.12.2021 and also made an alternative prayer for entrusting the investigation to a Special Investigation Team.

Vide order dt.10.5.2022, the Supreme Court declined to exercise jurisdiction in view of the efficacious alternative remedy available to petitioner under Sec.482 Cr.P.C r/w Art.226 of the Constitution of India, and granted liberty to the petitioner to move the Division Bench of this Court and for grant of bail.

Thereafter the instant Bail application was filed before this Court.

Consideration by the Court

The counsel for the petitioner contended that the petitioner is being victimized on account of political rivalry by functionaries of the erstwhile Government of Congress Party and even the functionaries of the AAP party which is currently in power in the State of Punjab, that the registration of the FIR No.02 dt.20.12.2021 against him is *malafide*, that it is a gross abuse of power and a case of political vendetta. He also stated that the FIR was registered against the petitioner just before the elections to the Legislative Assembly for the State of Punjab by the then Government with

considerable delay only to use it as an election plank against the petitioner. He also contended that the subject matter of the instant FIR is essentially covered by the earlier six FIRs where trials have concluded and it was registered to start a new investigation; that registration of the instant FIR, being a second FIR, when the information concerns the same cognizable offence or the same occurrence which gives rise to one or more cognizable offences, is prohibited by law in view of certain judicial precedents.

The State has strongly refuted these contentions.

It contended that the allegations in the instant FIR relate to close links of the petitioner with Satpreet Singh @ Satta and Parminder Singh @ Pindi, who are involved in drug trade and residing in Canada. According to the State, the material discloses close proximity of the petitioner with persons involved in illegal drug trade and financing and aiding of drug trade by petitioner and other accused, and that this is being investigated in detail in the present FIR, which was not done before. It is stated that the allegations in the present FIR may *inter alia* pertain to the same period as that dealt with in FIR No.56, but the petitioner was not moved against due to reasons that were peculiar to the earlier dispensation and this investigation is being done pursuant to directions of this Court in CWP No.20359 of 2013 (PIL).

We do not propose to go into these issues raised by the counsel for the petitioner as it is unnecessary for us to do so considering the scope of this application (which is for regular bail) and we are not to consider the legality or otherwise of the registration of the FIR in this application.

The petitioner is alleged by the State to have committed offences under Sec.25, 27A and 29 of the NDPS Act,1985.

Sec.37 of the said Act imposes certain limitations on grant of bail to persons accused of offences under Section 19 or Section 24 or section 27A of the said Act.

Sec.37 states:

“37. Offences to be cognizable and non-bailable.—

(1) Notwithstanding anything contained in the Criminal Procedure Code, 1973 (2 of 1974),—

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for offences under Section 19 or Section 24 or Section 27-A and also for offences involving commercial quantity shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Criminal Procedure Code, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.”

In **Union of India v. Mohd. Nawaz Khan¹**, the Supreme Court explained how the said provision is to be understood in the following terms:

“21. Under Section 37(1)(b)(ii), the limitations on the grant of bail for offences punishable under Sections 19, 24 or 27-A and also for offences involving a commercial quantity are:

(i) The Prosecutor must be given an opportunity to oppose the application for bail; and

(ii) There must exist “reasonable grounds to believe” that : (a) the person is not guilty of such an offence; and (b) he is not likely to commit any offence while on bail.

22. The standard prescribed for the grant of bail is “reasonable ground to believe” that the person is not guilty of the offence. Interpreting the standard of “reasonable grounds to believe”, a two-Judge Bench of this

¹(2021) 10 SCC 100

Court in **Shiv Shanker Kesari**², held that : (SCC pp. 801-02, paras 7-8 & 10-11)

“7. The expression used in Section 37(1)(b)(ii) is “reasonable grounds”. The expression means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence charged and this reasonable belief contemplated in turn points to 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.

... ..

11. The court while considering the application for bail with reference to Section 37 of the Act is not called upon to record a finding of not guilty. It is for the limited purpose essentially confined to the question of releasing the accused on bail that the court is called upon to see if there are reasonable grounds for believing that the accused is not guilty and records its satisfaction about the existence of such grounds. But the court has not to consider the matter as if it is pronouncing a judgment of acquittal and recording a finding of not guilty.”

23. Based on the above precedent, the test which the High Court and this Court are required to apply while granting bail is whether there are reasonable grounds to believe that the accused has not committed an offence and whether he is likely to commit any offence while on bail. Given the seriousness of offences punishable under the NDPS Act and in order to curb the menace of drug-manufacture/trade in the country, stringent parameters for the grant of bail under the NDPS Act have been prescribed.” (emphasis supplied)

In **NCB V. Mohit Aggarwal**³, the Supreme Court held that the expression “reasonable grounds” used in clause (b) of sub-section (1) of Sec.37 would mean credible, plausible grounds to believe that the accused person is *not guilty* of the alleged offence. It held that for arriving at any such conclusion, such facts and circumstances must exist in a case that can persuade the Court to believe that the accused person would not have committed such an offence. Dovetailed with the aforesaid satisfaction is an

²(2007) & SCC 798

³Order dt.19.7.2022 in CrI.A.No.1001-1002 of 2022 of Supreme Court

additional consideration that the accused person is unlikely to commit any offence while on bail.

Thus the Court, when called upon to consider an application for bail of a person accused of any of the offences mentioned in Sec.37 or offences involving commercial quantity is called upon to see if there are *reasonable grounds* for believing that the accused is not guilty and it must record its satisfaction about the existence of such grounds. The expression “reasonable grounds” means something more than *prima facie* grounds (**State of Kerala and others v Rajesh and others**⁴) *and* for arriving at any such conclusion, such facts and circumstances must exist in a case that can persuade the Court to believe that the accused person would not have committed such an offence. But the court is not to consider the matter as if it is pronouncing a judgment of acquittal and recording a finding of not guilty. If it intends to grant bail, it must record its satisfaction about the existence of such grounds.

Keeping in mind the above principles we shall consider:

‘whether, in the facts and circumstances of the case, on the material placed on record, the petitioner has made out a case for grant of bail or not?’

The FIR No.002 dt.20.12.2021 states in Col.3 that the offences are alleged to have been committed by petitioner between 1.1.2004 and 31.12.2014. The petitioner had been in judicial remand from 24.2.2022. These dates need to be kept in mind.

Also statements of Jagdish Singh@ Bhola, Jagjit Singh Chahal, Maninder Singh Aulakh @ Bittu, made under Sec.50 of the PMLA Act are the sheet anchor of the prosecution case. But those statements can at best be

⁴(2020) 12 SCC 122

‘information’ for registering the FIR, but cannot be treated as material for believing that the accused is guilty of the offences alleged.

Since the petitioner has been accused of having committed offences under Sec.25, Sec.27A and Sec.29 of the NDPS Act, and since Sec.37 gets attracted in the instant case only because the petitioner is also alleged to have committed an offence u/Sec.27A of the Act in the instant case, we shall first deal with the said allegation against the petitioner.

Sec.27A states:

“27-A. Punishment for financing illicit traffic and harbouring offenders.— Whoever indulges in financing, directly or indirectly, any of the activities specified in sub-clauses (i) to (v) of clause (viii-a) of Section 2 or harbours any person engaged in any of the aforementioned activities, shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees: Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.”

The essence of an offence under Sec.27A of the Act is that the accused must be guilty of “*financing*” activities mentioned in sub-clauses (i) to (v) of clause (viii-a) of Section 2 or has “*harboured*” any person engaged in such activities.

So we need to examine the material placed on record to see whether the petitioner had *financed* drug related offences or *harbored* other persons accused of drug related offences.

RE: alleged financing by petitioner of drug manufacture/trade

It is not the case of the State in any of the cases decided earlier such as FIR No.s 56/2013, FIR No.42/2013, FIR No.45/ 2013, FIR.No.50/ 2013, FIR No.69 /2013 and FIR No.241/2013 registered under the NDPS Act, there was any allegation that petitioner had financed drug

trafficking/manufacture/production or has harbored offenders under the said Act.

The State of Punjab has relied extensively on statements recorded under Sec.161 Cr.P.C *after* registration of the instant FIR .No.0002 dt.21.12.2021 against the petitioner in this regard to contend that there is sufficient material to prosecute the petitioner for the offences under Sec.25, 27A and 29 of the NDPS Act.

We shall therefore consider the same now.

Sri Niranjana Singh, the then Dy.Director of Enforcement Directorate, Jalandhar, in his statement recorded u/s.161 Cr.P.C on 22.12.2021, stated that details of properties, bank accounts and CDRs from before the year 2004 of the petitioner are available and can be collected from the Office of the Enforcement Directorate, Jalandhar. He is the person, who in 2014-15 had recorded the statements of Jagdish Singh @ Bhola, Jagjit Singh Chahal, Maninder Singh Aulakh @ Bittu, and those statements made under Sec.50 of the PMLA Act are the sheet anchor of the prosecution case. He stated that enquiry against the petitioner is still going on. He did not disclose any material in his possession about the petitioner's involvement in 'financing' of the narcotic drug related activities either prior to 2004 or later.

Sri Harpreet Singh Sidhu, IPS, ADGP, STF, Punjab (whose opinion also formed the basis of the FIR) recorded his statement under Sec.161 Cr.P.C on 22.12.2021. In his statement he relied on the contents of the STF report submitted by him to this Court which is extensively quoted in the FIR. He claims to have found from analysis of all statements of persons together recorded by the Enforcement Directorate that petitioner had a role in facilitating supply of pseudoephedrine to Satpreet Singh @ Satta and

Parminder Singh @ Pindi; that petitioner asked Jagjit Singh Chahal to supply it to them and also made similar arrangement with Jagjit Singh Chahal through Maninder Singh Aulakh @ Bittu Aulakh. According to him, there is sufficient evidence on record to further investigate the role of the petitioner as regards allegations of use of government machinery including vehicle and security personnel and other governmental facilities for assisting, facilitating and abetting narcotic drug related activities or other related illegal activities. He mentioned that he had asked sources to provide information regarding the process of drug trafficking/manufacturing, investment of proceeds of drug trafficking, money laundering etc., by persons mentioned by him in the 'status report' and as and when any information is received to this effect appropriate legal action shall be taken and communicated as per procedure. His statement also does not contain any material regarding the aspect of 'financing' of drug trafficking by petitioner.

Jagdish Singh @ Bhola, one of the accused who was convicted in FIR No.56/ 2013, and whose statement under Sec.50 of the PMLA Act recorded by Sri Niranjana Singh, Dy. Director, Enforcement Directorate was the basis of the STF report of Sri Harpreet Singh Sidhu, IPS, ADGP, Punjab, gave a statement under Sec.161 Cr.P.C. His statement does not disclose that he had come into contact with the petitioner at any time. He stated that after he was arrested in FIR 56/2013, and while he was being taken to Mohali Court from Central Jail, Nabha, he was told by Maninder Singh@ Bittu Aulakh that they were introduced to Satpreet Singh @ Satta by the petitioner. He also stated that he i.e., Jagdish Singh @ Bhola gave the name of the petitioner in the media on their asking. This suggests that he might have been prompted by someone to implicate petitioner. He stated that there

was no information on foreign supply of pseudoephedrine. He had denied making any statements under Sec.50 of the PMLA Act during his trial when questioned under Sec.313 Cr.P.C. He did not throw any light on the aspect of 'financing' of drug trafficking by petitioner.

Statements of Maninder Singh @ Bittu Aulakh made under Sec161 Cr.P.C recorded on 5.5.2022 and of Amarpal Singh @ Boni Ajnala made under Sec.161 Cr.P.C recorded on 17.5.2022 and their English translation were furnished in a sealed cover to this Court during prior hearings by other Bench. Though these statements show that the petitioner and Satpreet Singh @ Satta were friendly, they also do not throw any light on the aspect of 'financing' of drug trafficking by petitioner.

Though the statement of Maninder Singh @ Bittu Aulakh under Sec161 Cr.P.C is similar to his statement under Sec.50 of the PMLA Act, the latter was admittedly retracted as per Annexure P5 statement dt.14.1.2015. He had also made a statement under Sec.313 Cr.P.C in his trial under the NDPS Act disowning the statements recorded under Sec. 50 of the PMLA. He was acquitted after trial in FIR No.56/2013.

The State has also filed as Annexure R-1 to it's reply, the sworn affidavit of one Amarpal Singh @ Bony Ajnala in CRWP.No.4029 of 2022 as material against the petitioner. In this affidavit, the said individual states at para 9 pg.16 as under:

" Parminder Singh@ Pindi had told the petitioner in front of Satta that they supply chemicals used in medicines in Canada/America and in this work Sattaand Bikram Singh Majithia are his partners."

This is similar to the statement made by him under Sec.161 Cr.P.C. on 17.5.2022.

The above statement does not disclose the year/time/place of his meeting with Parminder Singh @ Pindi where Satpreet Singh@ Satta was also present. Even taken at face value, it does not constitute any incriminating circumstance as the word 'chemicals' is a general term and there are many chemicals which do not fall in the category of 'narcotic drugs' or 'psychotropic substances' and used in manufacture/production of medicines. It appears to have been made with a view to get back police security given to him prior to February, 2022 and which the State had withdrawn after the new Government came to power after the elections to the Punjab State Assembly in February,2022. It is not in dispute that the State did restore security to him in July 2022 after he filed CrWP. No.4029 of 2022in which he made allegations that petitioner had made threats to him.

Though there is a reference in the FIR to a statement by Jagjit Singh Chahal recorded under Sec.50 of PMLA that petitioner was given ₹35 lakhs as election funds from 2007-12, that statement does not provide any foundation for any allegations under the NDPS Act.

It is the case of the State as per it's reply (at para 18) that during investigation, witnesses examined and documents collected establish the close association of the petitioner with co-accused Canadian citizen of Indian origin Satpreet Singh @ Satta, during his visits and stay in India especially between 2007 and 2012. It is stated that as the co-accused Satpreet Singh @ Satta, Parminder Singh @ Pindi and Amarinder Singh @ Laddi are all based in Canada, collection of evidence had become difficult and time consuming. In para 24 of it's reply, the State pleaded that the investigation in the present case FIR is progressing and the collection of evidence from the relevant period of transactions, more than a decade ago, is underway and that

more information is required to be collected from within and beyond India to ascertain the backward and forward linkages, including financial transactions of the fugitive accused persons, closely associated with petitioner.

Sri V.Giri, Sr. Counsel appearing for the State stated that statements of 40 persons have been recorded till date, but he did not place before us statement of any other person about petitioner's involvement in 'financing' of drug trafficking. He stated that information is still being sought from various sources including those in Canada on this aspect.

So on the basis of the material placed before us as on date, we are of the view that the evidence against the petitioner is frail and not credible and so reasonable grounds exist to believe that petitioner is not guilty of '*financing*' drug trafficking.

This observation is tentative and made only for deciding this bail application and shall not be construed as an expression of a 'final opinion' on the issue as only after trial, such a finding can be recorded.

RE: the allegation of harboring of offenders by petitioner

On the aspect of '*harboring*' persons engaged in activities mentioned in sub-clauses (i) to (v) of clause (viii-a) of Section 2 of the NDPS Act, we may point out that the offence of "*harboring an offender*" is dealt with by Sec.212 IPC.

To make out the said offence, the prosecution has to prove that the person accused of harboring other accused was aware, *at the time of such harboring of the other accused*, that the person harbored (the other accused) is an offender with the intention of screening him from legal punishment (**Sanjeev Kumar v. State of HP⁵**). In other words there has to be some

⁵(1999) 2 SCC 288

material on record suggestive that petitioner had knowledge about Satpreet Singh @ Satta being involved in drug trafficking when he allowed him to stay at his residence or use his vehicles prior 2011.

Admittedly as per application filed by State seeking judicial remand of petitioner on 24.2.2022, Satpreet Singh @ Satta and Parminder Singh@ Pindi had been nominated as an accused in this FIR only on 23.12.2021 and Amrinder Singh @ Laddi was nominated as accused on 21.1.2022. This is admitted at para 12 of the reply filed by the State. The said document also reveals that Parminder Singh @ Pindi and Amrinder Singh @ Laddi had been declared as Proclaimed Offenders on 16.8.2014 and 22.4.2014 respectively in FIR No.241 dt.7.12.2013 and FIR No.56 dt.15.5.2013 respectively and they had never been tried. Admittedly all these three individuals are residents of Canada and they have not set foot in India after 2013. An extradition proposal against Parminder Singh @ Pindi is said to be pending with the Department of Justice, Government of Canada.

It was only prior to 2013 they are said to have interacted with petitioner.

At that time they were not even accused of committing any offence. So they cannot be said to be 'offenders' and petitioner cannot be accused of 'harboring' them.

In the light of this material, reasonable grounds exist to believe that petitioner is not guilty of offence of 'harboring' the co-accused.

This observation is also tentative and is made only for deciding this bail application and shall not be construed as an expression of a 'final opinion' on the issue as only after trial such a finding can be recorded.

So petitioner has shown more than prima facie grounds that the prosecution, as on date, has not made out a case that he committed the offence under Sec.27A of the NDPS Act.

Consequently, the stringent conditions for grant of bail under Sec.37 of the NDPS Act do not apply and the ordinary principles governing grant of bail to an accused have to be applied.

We shall now consider the principles governing grant of regular bail.

In **Sanjay Chandra v. CBI**⁶, the Supreme Court has declared :

*“37. The principles, which the Court must consider while granting or declining bail, have been culled out by this Court in **Prahlad Singh Bhati v. NCT, Delhi**⁷ thus: (SCC pp. 284-85, para 8)*

“8. The jurisdiction to grant bail has to be exercised on the basis of well-settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of [the] evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the legislature has used the words ‘reasonable grounds for believing’ instead of ‘the evidence’ which means the court dealing with the grant of bail can only satisfy it (sic itself) as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.”

*38. In **State of U.P. v. Amarmani Tripathi**⁸ this Court held as under: (SCC pp. 31 & 32, paras 18 & 22)*

⁶(2012) 1 SCC 40

⁷(2001) 4 SCC 280

⁸(2005) 8 SCC 21

*“18. It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail [see **Prahlad Singh Bhati v. NCT, Delhi and Gurcharan Singh v. State (Delhi Admn.)**]. While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused....”*

In **Dataram Singh v. State of U.P.**⁹, the Supreme Court reiterated the principle that grant of bail is the rule and refusal is the exception and bail is not to be withheld as a punishment. It observed the grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously and in a humane manner and compassionately.

In **P. Chidambaram v. Directorate of Enforcement**¹⁰, the Supreme Court summed up the principles for grant of regular bail. They are:

“21. The jurisdiction to grant bail has to be exercised on the basis of the well-settled principles having regard to the facts and circumstances of each case. The following factors are to be taken into consideration while considering an application for bail:

(i) the nature of accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution;

⁹(2018) 3 SCC 22

¹⁰(2020) 13 SCC 337

- (ii) reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses;*
- (iii) reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence;*
- (iv) character, behaviour and standing of the accused and the circumstances which are peculiar to the accused;*
- (v) larger interest of the public or the State and similar other considerations.*

Keeping in mind these principles we shall now consider whether petitioner can be granted bail or not in the instant FIR.

The other offences of which the petitioner is accused are those under Sec.25 and Sec.29 of the NDPS Act.

They state:

“Sec.25. Punishment for allowing premises, etc., to be used for commission of an offence.—

Whoever, being the owner or occupier or having the control or use of any house, room, enclosure, space, place, animal or conveyance, knowingly permits it to be used for the commission by any other person of an offence punishable under any provision of this Act, shall be punishable with the punishment provided for that offence.”

“Section 29. Punishment for abetment and criminal conspiracy.—

(1) Whoever abets, or is a party to a criminal conspiracy to commit, an offence punishable under this Chapter, shall, whether such offence be or be not committed in consequence of such abetment or in pursuance of such criminal conspiracy, and notwithstanding anything contained in Section 116 of the Indian Penal Code (45 of 1860), be punishable with the punishment provided for the offence.

(2) A person abets, or is a party to a criminal conspiracy to commit, an offence, within the meaning of this section, who, in India, abets or is a party to the criminal conspiracy to the commission of any act in a place without and beyond India which—

(a) would constitute an offence if committed within India; or

(b) under the laws of such place, is an offence relating to narcotic drugs or psychotropic substances having all the legal conditions required to constitute it such an offence the same as or analogous to the legal

conditions required to constitute it an offence punishable under this Chapter, if committed within India.”

The alleged financial transactions involving the petitioner are stated by the State in it's written submissions to have occurred between 2007 and 2013 when Satpreet Singh @ Satta and Parminder Singh @ Pindi had frequently visited Punjab and not afterwards. But the FIR is registered only on 20.12.2021, 8 years later.

It is not the case of the State that after 2013 there is material against the petitioner showing his involvement in drug contraband related offences.

We may point out that there is no material placed on record showing possession, transportation, storing by or recovery of any contraband from the petitioner. All recoveries in the concluded trials have been effected from specific individuals and petitioner was not shown therein to have any role in that regard.

The petitioner was not arrayed as an accused in the concluded trials under the NDPS Act by the State by invoking Sec.120-B IPC nor was he roped in under Sec.319 Cr.P.C.

There is no material to show that petitioner supplied any chemicals much less contraband to Canada based accused such as Satpreet Singh @ Satta or Parminder Singh @ Pindi with reference to time, place and quantity.

To attract the offence of Sec.25, there is no allegation that premises owned and under the control of petitioner or any conveyance owned or controlled by him was ever used for commission of the crime.

The State is still attempting to collect information from various financial institutions in India and abroad and does not appear to have made much headway in that regard as of date though the FIR was registered almost 8 months back on 21.12.2021.

The State did not even seek police remand of the petitioner after he surrendered before the Special Court and only sought judicial remand stating that his custodial interrogation is not necessary.

There is an allegation made against the petitioner by Amarpal Singh @ Bonny Ajnala that there is a threat to his life from petitioner and his associates. But the same appears to be hyped up by the said person so that the police security, which was withdrawn from him after the change in the Government in February/March 2022, gets restored. It has admittedly been restored in July 2022 after he filed CrWP 4029/2022.

As held in **Sanjay Chandra** (6 Supra) :

“21.... The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, “necessity” is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.

23. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson.

... ..” (emphasis supplied)

Having regard to the aforesaid reasons, we are satisfied that reasonable grounds exist to believe that petitioner is not guilty of the offences alleged against him in FIR No.002 of 2021 dt.21.12.2021 and he is not likely to commit such offences while on bail. It will take time for the trial to start and culminate. So no fruitful purpose is going to be served even if the petitioner is kept in judicial custody for a further indefinite period. We are of the opinion that continued detention of the petitioner, which started on 24.2.2022, is not warranted and he is entitled to be released on bail.

Accordingly, the present petition is allowed and the petitioner is directed to be released on regular bail subject to the following conditions:—

1. He shall furnish personal and surety bond in a sum of Rs.2 Lakhs each to the satisfaction of the trial Court/Duty Magistrate concerned.
2. He shall deposit his passport with the investigating agency concerned and shall travel abroad only with leave of this Court.
3. He shall not tamper with the prosecution evidence.
4. He shall appear before the trial Court on the date fixed, unless personal presence is exempted.
5. He shall not commit an offence similar to the offence of which he is accused of, or for commission of which he is suspected.

6.He 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 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 a final expression of opinion on the merits of the case and the trial Court should proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail application.

This application is allowed accordingly.

Pending application(s), if any, shall stand disposed of.

(M.S. RAMACHANDRA RAO)
JUDGE

10.08.2022
Vivek

(SURESHWAR THAKUR)
JUDGE

- | | | |
|-------------------------------|---|--------|
| 1. Whether speaking/reasoned? | : | Yes/No |
| 2. Whether reportable? | : | Yes/No |