

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

108+218

CRM-M-24095-2022(O&M)

Date of decision: 27.07.2022

JATIN SHARMA @ JATIN

....Petitioner(s)

Versus

STATE OF PUNJAB

...Respondent(s)

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

Present : Mr. Raj Kumar, Advocate
for the petitioner.

Mr. Karanbir Singh, AAG Punjab.

VINOD S. BHARDWAJ. J. (ORAL)

CRM-26350-2022

The instant application has been filed under Section 482 of the Code of Criminal Procedure for placing on record documents Annexures P-4 and P-5.

Application is allowed. Annexures P-4 and P-5 are taken on record.

CRM-M-24095-2022

The instant petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case bearing FIR No.62 dated 20.05.2020 under Sections 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'NDPS Act') registered at Police Station City STF SAS Nagar Mohali.

A perusal of the FIR shows that a secret information was received by ASI Kashmir Singh on 20.05.2020 that one Deputy Singh son of Bagicha Singh and Avtar Singh son of Balwinder Singh are doing the business of selling of heroin and contraband called ice and that they deliver the same in Amritsar. It is noted that the co-accused Avtar Singh had allegedly acquired the contraband

from Deputy Singh on 19.05.2020 and had to come to Amrtisar to deliver the same in the area of Maqbulpura and that in case a Nakabandi is done he has been apprehended. Finding the information to be reliable, noticing that being in the local rank of ASI he did not conduct investigation under the NDPS Act, he shared the same with SI Davinder Singh. Upon receipt of the said information the Sub Inspector reduced the same in to writing as a part of the police proceeding and sent the same to the Police Station for registration of the FIR, thereafter, a Nakabandi was carried out near the closed shops of Improvement Trust in Guru Teg Bahadur Nagar in the area of Maqbulpura at around 2:10 P.M. It is contended that after some time a person as prescribed in the secret information was seen coming from the vallah Mandi fatak and was apprehended with the help of officials and disclosed his name as Avtar Singh. The search was thereafter conducted in compliance of Section 50 of the NDPS Act before the DSP. The recovered contraband was weighed and a separate plastic box parcel was prepared which was sealed by SI Davinder Kumar by his seal 'DK' and by the seal of the DSP as 'VK'. The intoxicant parcel containing the substance (Ice) was also weighed and sealed in a similar fashion.

Learned counsel for the petitioner contends that the name of the petitioner figured in the disclosure statement of co-accused Avtar Singh from whose possession contraband is alleged to have been recovered. He further submits that no recovery pursuant to the said disclosure has been effected from the petitioner and despite the custodial detention of the petitioner having been awarded there was no incriminating material recovered at the instance of the petitioner. He further contends that the petitioner is in custody since 14.08.2020 and has already undergone actual custody of more than 01 year and 11 months

and that he does not suffer from any criminal antecedents. Besides, the trial is likely to take a long time since there are 17 witnesses to be examined and that no evidence has been examined so far. He further makes a reference to the submissions noticed while considering the bail petition filed by co-accused Avtar Singh, which reads thus:-

“4. Learned counsel appearing on behalf of the petitioner has vehemently argued that the petitioner has been falsely implicated in the aforesaid FIR at the hands of ASI Kashmir Singh and other Police officials. The entire story set-forth by the prosecution is framed and had been set up to arraign the petitioner. In this regard, he has drawn attention to the proceedings recorded in the FIR (Annexure P-1) as per which, the secret information was received by the ASI on 20.05.2020. He further contends that the said information is shared by the ASI Kashmir Singh with SI Davinder Kumar of STF on 20.05.2020. He has drawn attention of the Court to the Ruka sent by the Sub Inspector Davinder Kumar and that the timing recorded in the said Ruka is 2:10 p.m. on 20.05.2020.

5. In order to substantiate his arguments, learned counsel has thereafter referred to the final report filed by the Police under Section 173 Cr.P.C. and has pointed out that as per the final report, nakabandi was thereafter carried out and the petitioner is claimed to have been apprehended on 20.05.2020 itself. It is pointed out that as per the proceedings recorded in the final report, DSP Vavinder Kumar posted in the STF, Border Range, Amritsar was called as a Gazetted Officer to carry out personal search of the accused-petitioner herein after the petitioner exercised option in terms of Section 50 of the NDPS Act. He reached the spot after some time and again gave an option to the petitioner. The alleged contraband was thereafter recovered. As the petitioner had to be taken in custody after effecting recovery of the contraband, information as regards

his arrest had to be conveyed to his friend/relative as desired by petitioner. It is pointed out that as per the final report, information regarding the arrest of the petitioner-Avtar Singh was sent on Mobile No. 99142-13713 of Jagdish Singh who happens to be Uncle's son (Cousin) of the petitioner. To take the arguments further, learned counsel has thereafter referred to the reply filed by way of affidavit of Vavinder Kumar, Deputy Superintendent of Police, Special Task Force, Border Range, Amritsar wherein it has been so reiterated by the DSP that the information of the arrest of the petitioner was duly given on the Mobile phone number of Jagdish on 20.05.2020 at 13:48:38 i.e. 1:48 p.m.

6. Learned counsel argues that the information of arrest to Jagdish could not have preceded Ruka having been sent to the Police for registration of FIR after receipt of information. He thus submits that the Ruka regarding secret information having been sent on the same day at 2:10 p.m., the possibility of the information regarding arrest of the petitioner could not have been sent at 1:48 P.M. He points out that it is thus evident that the petitioner was already in custody of the Police at the time when this entire documentation was prepared against the petitioner.”

Learned State counsel however contends that the recovery had been effected from the co-accused Avtar Singh and that the petitioner was the supplier of the contraband that was recovered from the co-accused. He further could not controvert the fact that there is no other case registered against the petitioner and that he has already undergone actual custody of more than 01 year and 11 months. It is also not controverted that the co-accused Avtar Singh from whom recovery had been effected has already been granted the concession of regular bail vide order dated 02.04.2022 in CRM-M-12683-2021.

I have heard learned counsel for the parties and have perused the material on record.

Taking into consideration the submissions noticed above, the period of actual custody, stage of trial the absence of any criminal antecedents as well as the fact that the co-accused Avtar Singh from whose alleged possession recovery had been effected has already been granted the concession of regular bail, I deem it appropriate to enlarge the petitioner on bail.

Accordingly, the present petition is allowed and the petitioner is admitted to regular bail subject to his furnishing bail bonds/surety bonds to the satisfaction of Trial Court/Duty Magistrate, concerned.

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.

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.

(VINOD S. BHARDWAJ)
JUDGE

July 27, 2022

S.Sharma(syr)

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