

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

CRM-M-22974-2022
Reserve on: 13.07.2022
Pronounced on: 15.07.2022

Gurpreet Singh and another

...Petitioners

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Sumeet Goel, Senior Advocate, with
Mr. Aayush Gupta, Advocate,
for the petitioners.

Mr. Harbir Sandhu, AAG, Punjab.

HARNARESH SINGH GILL, J.

The petitioners seek grant of concession of regular bail in case bearing FIR No. 77 dated 22.04.2022 under Sections 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Special Task Force, District STF Wing.

Learned Senior counsel for the petitioners contends that the false implication of the petitioner would be apparent from the photographs placed on record as Annexures P.7 and P.8; that these photographs would clearly show that on 22.04.2022 at 3.28 p.m., the petitioners were going on their motor-cycle and at around 3.50 p.m, the said motor-cycle was being driven by Constable Kulwinder Singh, whereas the petitioners were allegedly being taken in a white colour XUV from Ludhiana to Sirhind; that the possession of the motorcycle with the said Police Constable clearly establishes that firstly, the petitioners were taken by the police and then, the alleged contraband was planted upon them at 7.00 p.m. on 22.04.2022 and accordingly, the FIR was registered.

It is further submitted that the petitioners have falsely been implicated in the present case; that the petitioners moved an application before the trial Court for preserving the CCTV footage from the factory of M/s Bhagwan Products at Ludhiana as well as the Gill Bridge, Ludhiana; that considering the facts of the case, the concerned SHO was directed to preserve the CCTV footage and further directed to submit the report of the same on 07.05.2022.

Learned Senior counsel further contends that surprisingly, in order to save the officials of STF, the concerned SHO had not preserved the same.

Learned Senior Counsel further contends that as per the prosecution version, recovery of 260 gram heroin, which is marginally above the commercial quantity, had been effected from the petitioners; that the contraband was weighed with the polythene bag; and that there is no other case registered or pending against the petitioners.

Learned Senior Counsel would further argue that the petitioner has been in custody since the date of arrest i.e. 22.04.2022 and keeping in view that the alleged contraband is marginally above the commercial quantity, the petitioner may be granted the indulgence of regular bail. In this regard, he relies upon various orders passed by the Coordinate Benches, i.e. CRM-M-7407-2021-Gurvinder Singh Vs. State of Punjab, decided on 22.02.2021; CRM-M-18775-2021 – Jatin Arora @ Jatin Vs. State of Punjab, decided on 07.07.2021; CRM-M-44873-2019 – Kala Vs. State of Punjab, decided on 24.01.2020 etc.

Learned Senior counsel would further rely upon the latest judgment of the Hon'ble Apex Court in State of West Bengal Vs. Rakesh Singh @ Rakesh Kumar Singh, Criminal Appeal No. 923 of 2022, delivered on 11.07.2022. While laying emphasis on the said judgment, it is submitted that in the said case, the recovery effected

was of intermediate quantity and that there were as many as 53 other cases against the respondent-accused therein, out of which, he had been convicted in 2 cases. Besides, that there were allegations against the respondent-accused therein of having exerted threats to the Investigating Officers and public servants and misbehaving with them, were also there. It is, thus, contended that despite these attending circumstances, the order granting bail to the respondent therein by the High Court was upheld by the Hon'ble Apex Court. Learned Senior Counsel would submit that the present case is on much better footing as there is no other case registered or pending against the petitioner and that the alleged recovery is marginally above the commercial quantity.

Still further reliance is also placed upon the judgments of the Hon'ble Apex Court in Union of India Vs. Md. Jamal, Criminal Appeal No. 752 of 2022, decided on 06.05.2022; Union of India vs. Rattan Mallik @ Habul, 2009(1) RCR (Criminal) 938 and Union of India through Narcotics Control Bureau, Lucknow Vs. Md. Nawaz Khan, 2021 AIR (SC) 4476.

On the other hand, learned State counsel, while opposing the prayer for bail, submits that recovery of contraband effected from the petitioners, falls under the commercial quantity and that on the basis of photographs, the authenticity whereof is yet to be ascertained, it cannot be said that the petitioners have falsely been implicated. Though, it is vehemently denied that the motorcycle of the petitioners was being driven by a Police Constable immediately at the given time, yet it is submitted that the petitioners are only alleging that they were being taken in a white colour XUV car and that there is no corroborative material on record to establish this fact.

So far as the judgment of the Hon'ble Apex Court in Rakesh Singh's case (supra) is concerned, suffice to say that the said

case has its peculiar facts, which have been noticed by in para No. 18.1 of the judgment, that would read as under:-

“18.1 Although, the past history of the respondent and even his conduct in relation to the processes concerning the present case give rise to a few questions but, the strong countervailing factor in the present case is the prima facie indication that he is being sought to be framed by concoctions and baseless stories. Another factor noticeable is that the respondent has not been involved in any NDPS Act case or any akin offence in the past. Interestingly, it is noticed from the material placed on record that nothing of any contraband article has been recovered from the respondent or from any place under his exclusive control. This factor further adds on to the doubt as to whether the respondent had at all been indulgent in narcotics or any contraband? That being the position, the view as taken by the High Court cannot be said to be an altogether unacceptable or impossible view of the matter. Moreover, it cannot be said that the respondent was consciously seeking to abscond on 23.02.2021 merely because he was found in the night at Purba Bardhaman and not at Kolkata. In any case, the aspect relating to tendency to flee has been duly taken care of with the conditions as imposed by the High Court. The other submissions with reference to the decision in the case of Prasanta Kumar Sarkar (supra) hardly make out a case for interference particularly looking to the nature of evidence sought to be adduced by the prosecution against the respondent. In this regard, we would hasten to observe that apart from the stringent conditions already imposed by the High Court, it is always open for the prosecution to seek imposition of any further condition or even to seek cancellation of the bail granted to the respondent, in case of any fault on his part in due adherence to the conditions already imposed.”

Therefore, the said judgment is of no help to the petitioners. Still further, the authenticity of the photographs is to be decided on the basis of evidence during the trial.

In Md. Jamal's case (supra), the order granting bail to the accused therein by the High Court, was set aside by the Hon'ble Apex Court considering the provisions of Section 37 of the NDPS Act.

In Rattan Mallik's case (supra), it was held by the

Hon'ble Apex Court that while granting bail to an accused from

whom recovery of the commercial quantity was effected, the twin conditions i.e. reasonable grounds for believing that the accused is not guilty of the alleged offence and that he is not likely to commit any offence while on bail, are to be satisfied. Similar was the view taken by the Hon'ble Supreme Court in Md. Nawaz Khan's case (supra).

Thus, even the said judgments are of also no help to the petitioners.

So far as the Coordinate Benches' orders relied upon by the learned Senior Counsel for the petitioners are concerned, the same are prior to the various rulings of the Hon'ble Apex Court, wherein a considerable period of custody is mandated before considering the pleas of the accused for grant of bail.

In Special Leave to Appeal (Crl.) No. 5507/2020 – Jamshed Alam @ Jamsher Alam Vs. The State of Jharkhand, vide order dated 29.10.2021, the Hon'ble Apex Court was pleased to order the release of the accused therein on bail, only after he had undergone custody period of more than 3 years.

So far as the Coordinate Benches' orders relied upon by the learned Senior Counsel are concerned, the same are prior to the decision of the Hon'ble Apex Court in Jamshed Alam's case.

In view of the above, no ground is made out to grant the concession of regular bail to the petitioners.

Dismissed.

(HARNARESH SINGH GILL)
JUDGE

15.07.2022

ds

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No