

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-23628-2022 (O&M)
Date of decision: 02.06.2022

Joginder Singh @ Jagga

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Vipul Jindal, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for grant of regular bail in FIR No.18 dated 30.01.2021 under Sections 21(c), 25, 29 of NDPS Act and Section 25 of Arms Act, registered at Police Station STF, Phase IV, District SAS Nagar (Mohali).

Learned counsel for the petitioner relies upon the order dated 06.05.2022 passed in CRM-M-17923-2022, vide which wife of the petitioner/co-accused Amarjit Kaur @ Jeeta was granted the concession of regular bail. The operative part of the order reads as under: -

“...Learned counsel for the petitioner submits that petitioner Amarjit Kaur @ Jeeta is wife of Joginder Singh @ Jagga, who

was earlier involved in FIR No.199 dated 10.10.2020 under Sections 21 & 29 of NDPS Act, registered at Police Station Sadar Batala, District Batala and was granted regular bail vide order dated 10.03.2022 passed in CRM-M-5366-2021. In the said petition, husband of the petitioner-Joginder Singh @ Jagga set up a defence that on an earlier occasion, he filed CRWP-5324-2020 levelling allegations against DSP Balbir Singh Sandhu that he is likely to be involved in a case under NDPS Act at his instance and later on, FIR No.199 was registered against him, in which DSP Balbir Singh Sandhu was the Gazetted Officer. It is further submitted that the petitioner, who is first offender and is not involved in any other case, was involved in present FIR No.18, for the reason that she is wife of Joginder Singh @ Jagga.

Learned counsel further submits that in the present FIR, registered on 30.01.2021 at 10.45 hours, it is recorded that at 03.07 a.m., LR/ASI Rohit Sharma informed SI Nirmal Singh that Joginder Singh @ Jagga, who is confined in Central Jail, Amritsar, is doing the business of selling heroin and his wife/petitioner Amarjit Kaur @ Jeeta is also involved in the said business. On 29.01.2021, some unknown persons have supplied huge quantity of heroin to the petitioner and if a raid is conducted, huge quantity of heroin can be recovered. Thereafter, ASI Rohit Sharma informed DSP Vavinder Kumar to come at the spot and a team reached at the spot and conducted raid at house of Joginder

Singh @ Jagga, where petitioner Amarjit Kaur @ Jeeta was found along with her children and maid. In the supervision of DSP Vavinder Kumar, interrogation of the petitioner was conducted, who made disclosure statement (Annexure P-5) that heroin is concealed in the bonnet of car bearing registration No.CH-01-AR-2202. It is submitted that this disclosure statement bears the complete details of FIR No.18 and this memo was signed by ASI Rohit Sharma, ASI Kulwinder Singh and SI Nirmal Singh and despite the fact that DSP was present at the spot, he had not signed the same.

Learned counsel has referred to recovery memo of heroin (Annexure P-6), which was signed by DSP Vavinder Kumar, ASI Kulwinder Singh, ASI Rohit Sharma, Lady Constable Manjinder Kaur and SI Nirmal Singh. Even in this memo, details of the FIR have been given. Again a reference is made to recovery memo of a pistol and some ammunition, which was signed by ASI Kulwinder Singh and ASI Rohit Sharma, however, neither DSP Vavinder Kumar nor Lady Constable Manjinder Kaur signed the same. Learned counsel has further referred to another document, prepared at the spot i.e. recovery memo of Rs.25,700/-, stated to be drug money, to submit that this document is typed one, in which FIR No.18 is typed in the same font, in which document is prepared and this document is signed by ASI Kulwinder Singh in Punjabi, though in some documents, he signed in English along

with ASI Rohit Sharma. Even on this document, DSP had not signed, though he was allegedly present at the spot. Similarly, recovery of car No.CH-01-AR-2202, is also a typed document with complete details of FIR and signatures of DSP are not there on the said document.

Learned counsel has also referred to certain other documents, which are prepared at the spot in handwriting regarding the recovery as well as statement of DSP Vavinder Kumar recorded under Section 161 Cr.P.C., in which he stated that all the documents referred to above were prepared in his presence, though nothing is stated as to why he had not signed the same, therefore, presence of the DSP at the spot is doubtful. Learned counsel has next referred to ruqa (Annexure P-1), which was sent at 8.45 a.m., after completing all the investigation at the spot and preparing the documents, referred to above, for registration of FIR. Learned counsel submits that a perusal of ruqa would show that though it is stated that at 3.07 a.m., LR/ASI Rohit Sharma gave information, as noticed in the FIR and in presence of DSP Vavinder Kumar, raid was conducted and petitioner made disclosure statement and thereafter, recovery of 1300 grams of heroin, some firearm and ammunition was effected. It is argued that ruqa was sent at 08.45 a.m. for registration of FIR and FIR was registered at 10.45 a.m. and there was no occasion for the Investigating Officer/DSP to record complete

details of FIR No.18 in the documents prepared at the spot, much prior to sending ruqa and on some of the documents, DSP had not signed, which shows that these were prepared later on.

Learned counsel has next argued that involvement of the petitioner is only on account of the fact that her husband is involved in some other FIRs and had levelled allegations against DSP Balbir Singh Sandhu and on his asking, husband of the petitioner Joginder Singh @ Jagga is repeatedly involved in the cases. It is further submitted that the petitioner is in custody for the last 01 year, 02 months and 29 days and there is no one to look after the children, as her husband is already in judicial custody.

*Learned counsel has referred to judgment of the Hon'ble Supreme Court in **Smt. Nandini Satpathy Vs. P.L. Dani (Criminal Appeal No.101 of 1978)**, in which it is held that the police must invariably warn and record the fact about the right to silence against self-incrimination and when the accused is literate to take his written acknowledgment. In context of Article 20(3) of the Constitution of India, the Hon'ble Supreme Court has observed that an assurance of awareness and observation of right of silence is given to an accused.*

Learned counsel has also argued that the information was sent by ASI Rohit Sharma under Section 42 of NDPS Act, as ASI Rohit Sharma being the local rank official was not competent to comply with the provisions of Section 42 of NDPS Act, therefore, it

will be a matter of trial whether provisions of Section 42 of NDPS Act were properly complied with or not. In this regard, learned counsel has referred to 2nd proviso to Section 42 (1) of NDPS Act, which reads as under: -

“Provided further that if such officer has reason to believe that a search warrant or authorization cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.”

In compliance thereof, DSP Vavinder Kumar had not recorded any ground of his belief for raiding house of the petitioner at midnight.

Learned State counsel has filed the custody certificate in the Court today, according to which, the petitioner is in custody for the last 01 year, 02 months and 29 days; charges were framed on 13.10.2021 and out of total 26 prosecution witnesses, none has been examined so far. It is, however, submitted that detail of the FIR in the documents was given because the information was received by the police officials at 03.00 a.m., which was shared by ASI Rohit Sharma with SI Nirmal Singh and then to DSP Vavinder Kumar, therefore, details of the FIR were mentioned, however, FIR number was entered with pen later on.

However, on a Court query, learned State counsel could not dispute that two documents, which are typed documents giving the details of FIR No.18, were also prepared at the spot, however, these documents do not bear the signatures of DSP, who was present at the spot.

In reply, learned counsel for the petitioner has additionally argued that very fact that Section 21 (c) of NDPS Act is mentioned in these documents, though at some places, FIR No.18 was later on added with pen as well as provisions of Arms Act are mentioned, would reflect that secret information was received by the police only with regard to some narcotic substance and there was no secret information leading to Arms Act as well as there was no information that recovery would be falling under commercial quantity, therefore, adding of Section 21 (c) of NDPS Act in anticipation, while preparing all those documents, much prior to sending of ruqa, raises a suspicion about the investigation.

After hearing learned counsel for the parties, without commenting anything on merits of the case and considering aforesaid facts and circumstances of the case, this petition is allowed and the petitioner is directed to be released on regular bail subject to furnishing her bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate, concerned.”

Learned counsel submits that the petitioner was already in judicial

custody and it will be a debatable issue before the trial Court whether the charge beyond Section 29 of NDPS Act is sustainable against the petitioner or not. It is further submitted that on an earlier occasion, the petitioner filed CRM-M-5366-2021 for grant of regular bail relating to FIR No.199 dated 10.10.2020 under Sections 21 & 29 of NDPS Act, registered at Police Station Sadar Batala, District Batala and the same was allowed vide order dated 10.03.2022, by making the following observations: -

“...Counsel for the petitioner submits that as per the allegations in the FIR, registered at the instance of ASI Vijay Kumar, it is stated that on 10.10.2020, while on patrol duty, he received a secret information that petitioner-Joginder Singh @ Jagga, a former Sarpanch of the village is indulged in the business of selling of heroine and is keeping the same in his house and if a raid is conducted, heroine can be recovered. On the basis of the same, a ruqa was sent to the Police Station and the FIR was registered at 2.20 a.m.

Counsel for the petitioner has submitted that it is further the case of the prosecution that after registration of the FIR, an information was sent to Balbir Singh, DSP, Sub Division Fatehgarh Churian, who reached at the spot for conducting a raid at the house of the petitioner. When the DSP reached at the spot, outside the house of the petitioner a person was nabbed, who informed his name as Sarwan Singh son of Shingara Singh. He was taken into custody on the basis of suspicion. The petitioner

was found in the lobby of the house and was apprehended. The DSP gave him a notice to be searched before a Gazetted Officer or a Magistrate, who can be called at the spot or he could be taken before him. On this, the petitioner reposed faith on the DSP to conduct the search. Thereafter, on personal search of the petitioner, one polythene of black colour containing 250 grams of heroine along with Indian currency was recovered. The recovery was sealed by following the proper procedure. One mobile was also recovered in the personal searched, which was also taken into possession. Thereafter, a disclosure statement of the petitioner was recorded and as per the same, the petitioner led the police party to a room inside the house and from a trunk recovered a total currency notes of Rs.1,35,000/-, which were also taken in possession by the police.

Thereafter, the petitioner took the police party to a car, which was parked near his house and from the dash board of the car, a packet was recovered from which 01 kg. of heroine was recovered. The same was also taken in possession by way of a recovery memo.

Counsel for the petitioner has argued that the petitioner, in fact, much prior to registration of the FIR has filed Cr.W.P.-5324-2020 against the State of Punjab, the police official and Balbir Singh Sandhu, DSP, who was the Gazetted Officer in the FIR, was implicated as respondent No.6 in the said petition and ASI Vijay

Kumar, who as the informant of the same was impleaded as respondent No.7. Counsel for the petitioner has referred to the prayer clause of the petition, which reads as under :-

“It is, therefore, respectfully prayed that the present petition may kindly be allowed. An appropriate writ, order or direction inter alia directing the respondents to comply with the procedure stipulated under Section 100/160/165/166 Cr.P.C. in case the petitioner is sought to be interrogated upon or investigated upon, as also further directing the respondents to conduct videography or the entire occurrence in case the petitioner is sought to be arrested, in view of the observations recorded by the Hon’ble Division Bench of this Hon’ble High Court on 28.5.2019 in CRA-D-564-2014 ‘Abhijeet Singh Vs. State of Punjab’ and to produce the petitioner immediately before the nearest Magistrate in case any recovery is to be effected from the petitioner in terms of the law laid down by the Hon’ble Supreme Court in the case of Vijaysinh Chandubha Jadeja Vs. State of Gujarat reported as 2011(1) SCC 609 so as to rule out the repeated false implication of the petitioner.”

Counsel for the petitioner has argued that the petitioner much before the registration of the FIR was apprehending that both ASI Vijay Kumar and DSP Balbir Singh Sandhu will involve him in a case under the NDPS Act, therefore, it was prayed in the

said petition that if any case is registered against the petitioner, he should be produced before the Magistrate for conducting the investigation. Counsel for the petitioner further submits that in this petition notice of motion was issued on 28.7.2020 for 28.10.2020 and on receiving the notice of the same, the two police officials have involved the petitioner in the present case.

It is next argued that despite a request made by the petitioner in the aforesaid writ petition that even if in future any case is registered, a search be conducted before the Magistrate. The two police officials recorded the consent of the petitioner that the search be conducted by the same DSP Balbir Singh Sandhu and was never taken before the Magistrate for the purpose of search and recovery.

Counsel for the petitioner submits that the action show the mala fide of the two police official involving the petitioner in a false case under the NDPS Act. Counsel has further argued that on the same day the petitioner was shown arrested in two more FIRs under the NDPS Act, i.e. FIR No.10 dated 11.2.2019, registered at Police Station Sadar Batala and FIR No.18 dated 13.1.2021, registered at Police Station STF, Phase 4, SAS Nagar, Mohali. Counsel for the petitioner submits that in both the cases, the petitioner was involved on the basis of the disclosure and in FIR No.18, the petitioner was already in the custody in the present case.

Counsel for the petitioner has then referred to the cases in which the petitioner was earlier involved to submit that looking into his previous antecedents, the petitioner is repeatedly involved in the cases and with reference to the affidavit of the DSP filed by the State of Punjab, submit that he has been acquitted in one FIR of 1994 and 8 other FIRs relating to the years 2001 to 2004 and again acquitted in two FIRs of 2014. Counsel for the petitioner further submits that in one FIR, he has undergone the sentence and in one FIR of 2004, he was convicted on 15.3.2007 and his sentence has been suspended by this Court.

Counsel for the petitioner has next argued that in the present case, the petitioner is in custody for the last more than 01 year and 01 month and the challan stands presented and in view of the defence set up by the petitioner that he is likely to be involved by ASI Vijay Kumar and DSP Balbir Singh Sandhu which has actually happened after filing of this petition, the petitioner is entitled to grant of regular bail.

Counsel for the petitioner further submits that though as per the affidavit of the DSP, the petitioner was lastly involved in a case of 2014, however, for a period of 07 years he was not involved in any other case as he tried to improve but the aforesaid two police officials have falsely implicated him in the present case and after his arrest, he has been implicated in two more cases on the basis of the two disclosures.

The learned State counsel, on the basis of the affidavit of SHO, however, has denied the allegations and submit that the petitioner was arrested at the spot and recovery of 250 grams of heroin was recovered from his pant and 01 kg. of heroin from the car, which was parked near his house and, therefore, the allegations are of serious nature. However, the affidavit of the SHO, is silent about the filing of the Cr.W.P.-5324-2020 and the fact that notice of motion was issued in this case about two months prior to the registration of the FIR.

On a Court query, the learned State counsel could not dispute that the pendency of the aforesaid direction petition was in the notice of both the police officials and despite that, no other police official was deputed to conduct the recovery to show that a fair and impartial investigation have been conducted.

The learned State counsel, on the basis of the affidavit, has further stated that the car No. PB-18-W-1832 is not in the name of the petitioner and rather it is in the name of one Malook Singh son of Gurdeep Singh, resident of village Bal Purian and on investigation, Malook Singh stated that by availing loan in his name, Joginder Singh @ Jagga has purchased the car. The learned State counsel has also referred to the other cases which remained pending and as per the affidavit, in 9 cases, the petitioner stands acquitted and in 03 cases, including the present case, he is under investigation. It is also not disputed that in FIR

Nos.18 and 24, the petitioner was taken into custody while he was already in custody in the present case and in both these FIRs, nothing was recovered from the petitioner, except that he is nominated on the disclosure of the co-accused.

After hearing learned counsel for the parties and considering the fact that the petitioner is in custody for the last 01 year 01 month; the investigation is complete and in view of the fact that the petitioner had already filed Cr.W.P.5324-2020 pointing a finger against complainant ASI Vijay Singh and DSP Balbir Singh Sandhu 03 months prior to the registration of the FIR that they are likely to involve him in a false case and in the said petition notice was issued, though in ordinary prudence on receiving the secret information, some other Gazetted Officer should have been deputed instead of DSP Balbir Singh Sandhu, which raises a suspicion and mala fide against the abovesaid two police officials in conducting the investigation, therefore, without commenting anything on the merits of the case, the present petition is allowed and the petitioner is ordered to be released on bail, subject to his furnishing bail bonds/surety bonds to the satisfaction of the Chief Judicial Magistrate/Duty Magistrate, concerned.”

Learned counsel next submits that on the face of it, the petitioner is setting up a defence regarding his false implication at the instance of ASI Vijay Kumar and DSP Balbir Singh Sandhu and his involvement in the present FIR, while in judicial custody in an earlier FIR No.199, is to be decided by the trial

Court whether he has been falsely implicated in the present FIR or not. It is further submitted that the petitioner is in custody for the last 01 year, 03 months and 27 days; charges have been framed and out of total 26 prosecution witnesses, none has been examined so far.

Learned State counsel has filed the custody certificate in the Court today and has not disputed the factual position.

After hearing learned counsel for the parties, without commenting anything on merits of the case and considering aforesaid facts and circumstances of the case, this petition is allowed and the petitioner is directed to be released on regular bail subject to furnishing his bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate, concerned.

Petition is disposed of.

[ARVIND SINGH SANGWAN]
JUDGE

02.06.2022
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No