

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-23516-2022 (O&M)
Date of decision: 01.06.2022

Kulwant Singh

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. O.P. Kamboj, 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.98 dated 09.06.2021 under Section 22(c) of NDPS Act, registered at Police Station Kotwali, Bathinda.

Learned counsel for the petitioner, at the very outset, relies upon the order dated 19.05.2022 passed in CRM-M-20636-2022, vide which co-accused Jagseer Singh has been granted the concession of regular bail, by passing the following order: -

“...Learned senior counsel for the petitioner has argued that as per the allegations in the FIR, which was got registered by SI Balwant Singh, it is stated that while on petrol duty, 03 persons

were sitting on the side of a Canal and one black colour kit bag was lying with them and they were exchanging something with each other. On suspicion, they were apprehended by SI Balwant Singh and they disclosed their names as Gurjeet Singh, the petitioner – Jagseer Singh and Kulwant Singh. As the mouth of the black kit bag was opened, strips of intoxicant tablets were clearly visible. Thereafter, SI Balwant Singh sent a message to the Police Station and thereafter, SI Gurmukh Singh was deputed but he returned due to some reason and thereafter, Inspector/SHO Daljit Singh was deputed. It is further stated in the FIR that thereafter, a notice under Section 50 of the NDPS Act was given individually to all the 03 persons, in which it is mentioned that due to open mouth of the bag, the strips of intoxicant tablets are clearly visible so the accused has a right to be searched before a Gazetted Officer or a Magistrate. On this, all the 03 accused reposed confidence on the same Investigating Officer and stated that he can search the black colour bag as well as he can conduct the personal search of the accused persons.

Learned senior counsel for the petitioner has further submitted that the locus under Section 50 of the NDPS Act, itself is defective as it is stated in the notice itself that the strips of intoxicant tablets are visible. It is further stated that by taking the consent of all the 03 accused persons by the Investigating Officer, in his favour himself, will also be a debatable issue to be decided

during the course of trial, whether it amounts to a proper compliance of Section 50 of the NDPS Act or not.

Learned senior counsel for the petitioner has then referred to an enquiry, which was conducted on a representation given by wife of the co-accused Gurjeet Singh about his false implication. In para 16 of this enquiry, conducted by the Deputy Superintendent of Police Kulwant Singh, it has come that Gurjeet Singh was innocent and he was not found involved in the case.

Learned senior counsel for the petitioner has further submitted that later on, Gurjeet Singh was found innocent and he has been discharged from the case. It is also argued that in view of the said enquiry, the entire investigation conducted at the spot become suspicious and therefore, the petitioner, who is in custody for the last about 11 months and 10 days and is not involved in any other case, be granted the concession of regular bail.

Counsel for the State, on instructions from ASI Gursewak Singh, has not disputed the factual position but opposed the prayer for bail. It is also not disputed that as per the enquiry, one off the accused Gurjeet Singh was discharged in the present case.

Counsel for the State has also submitted that the investigation is complete and challan has been presented and even charges have been framed and out of 12 PWs, none has been examined so far...”

For the sake of brevity, facts are not reproduced again.

Learned State counsel has filed the custody certificate in the Court today, which reflects that the petitioner is in custody for the last 11 months and 23 days and is not involved in any other case.

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

01.06.2022
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No