

**(209) IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-28124-2022

Date of Decision: 15.07.2022

Gurdas Singh

... Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr.Vishneet Singh Kathpal, Advocate
for the petitioner.

Mr. Kirat Singh Sidhu, DAG, Punjab.

JASJIT SINGH BEDI, J.

This is the third bail application for the grant of regular bail under Section 439 Cr.P.C in case bearing FIR No.0130 dated 27.04.2020 (Annexure P-1) registered under Section 22 of Narcotic Drugs and Psychotropic Substances Act, 1985, Section 188 IPC, 1860 and Section 51(b) of the Disaster Management Act, 2005 at Police Station Sadar Fazilka, District Fazilka.

2. Bereft of unnecessary details, the allegations, as levelled in the FIR, are that on 27.04.2020, ASI Bhagat Singh received a secret information that one Gurdas Singh-petitioner had been indulging in the sale of intoxicant tablets and on that day, he along with one more person, was coming to Fazilka in the Car bearing registration No.PB-30X-9121 to sell the drugs. A Naka was installed but when the car came there and was signalled to stop, a stray animal

came onto the road because of which the car overturned. The occupants of the car were taken to the Hospital. The police party reached at the spot and 2000 tablets Clovidol-100SR were recovered from the accidented vehicle.

3. The learned counsel for the petitioner contends that the contraband was not recovered from his conscious possession. There has been violation of Section 42 of the NDPS Act. No independent witness was associated at the time of recovery. As per the Investigating Officer, the recovered medicines pertained to Batch No.TVD-19688, whereas, the recovery memo stated the Batch No.TVD-19685. The batch number of the tablets had not been mentioned in the Form M-29 and there were various discrepancies in the Inventory Report prepared (Annexure P-7). He contended that the petitioner had been in custody since the last 1 ½ years and the co-accused of the petitioner had been granted the concession of bail by this Court vide order dated 01.06.2022 (Annexure P-8). It was lastly, contended that there was change in circumstances after the last dismissal of the bail application on 30.05.2022 inasmuch as the statement of PW1-I.O. Harbans Singh had been recorded whose cross-examination revealed discrepancies, inconsistencies and variations. Reliance is placed by the learned counsel for the petitioner on the judgments in (i) Union of India Versus K.A Najeed, 2021(2) R.C.R. (Criminal) 145, (ii) Ghanso @ Kalo Versus State of Punjab, CRM-M-20629-2022 decided on 31.05.2022, (iii) Sukhwant Singh Versus State of Haryana, 2022(1) R.C.R. (Criminal) 233 and (iv) Gourav Doomra Versus State of Punjab, 2020(4) Law Herald 2785.

4. On the other hand, the learned State counsel contended that there was no change in the circumstances from the time when the last bail

application of the petitioner was dismissed as withdrawn on 30.05.2022. He submitted that in fact, the statement of the I.O. Harbans Singh had been recorded on 04.05.2022 as is borne out from the Annexure P-3 and the discrepancies referred to by the petitioner were firstly, a matter of adjudication during the course of trial and secondly were to the knowledge of the petitioner when his second bail application was heard and decided on 30.05.2022. He contended that the petitioner had been duly named in the FIR and in fact, the brother of the petitioner was the owner of the car which was being driven by him from which the recovery has been effected.

5. I have heard the learned counsel for both the parties at length.

6. Undoubtedly, this is the third bail application of the petitioner. An attempt has been made to project that the present bail application has been filed on account of change circumstances of PW1-I.O. Harbans Singh having been examined in Court. It may be pointed here that as per Annexure P-3 i.e. the deposition of PW1-S.I. Harbans Singh, he was examined and cross-examined on 04.05.2022. The second bail application of the petitioner had been dismissed as withdrawn on 30.05.2022 after the matter had been argued at some length and therefore by no stretch of imagination can it be stated that the present petition for the grant of bail has been filed on the basis of changed circumstances.

7. Having stated so I would proceed to decide this case on merits. The petitioner has raised various grounds as have been enumerated hereinabove. In the present case, the petitioner was duly named in the secret information received by the Investigating Agency as being involved in the trafficking of intoxicating tablets. The vehicle in question from which the

recovery has been effected belongs to the brother of the petitioner and the petitioner was driving the same and therefore, it cannot by any stretch of imagination be stated at this stage for the purposes of adjudication of this bail application that the petitioner is innocent. Further, certain purported discrepancies have been pointed out in the Inventory Report, Recovery Memo, Form M-29 etc. The discrepancies, if any as have been pointed out shall be appreciated and adjudicated upon during the course of trial and this Court at the stage of deciding the present bail application cannot examine such discrepancies so as to grant the petitioner the concession of bail. The case of the co-accused of the petitioner namely Varinder Singh is on a different footing. Since the said Varinder Singh was not named in the FIR nor is either the owner or the driver of the car from which the recovery was effected.

8. The petitioner has referred to a number of judgments to buttress his argument that having undergone a sufficient period of incarceration, he ought to be granted the concession of bail.

In Union of India Versus K.A Najeed (supra), the bail was granted after the accused has spent nearly 05 years and 05 months in judicial custody.

In Ghanso @ Kalo Versus State of Punjab (supra), the petitioner had been granted the concession of bail after 2 ½ years in judicial custody and even otherwise, she was a lady.

9. In the present case, the petitioner has been in custody since 03.12.2020. His last bail application was dismissed only approximately 45 days ago and as such the petitioner has been in custody for 01 year and 07

months and therefore, the judgments cited hereinabove would not come to the aid of the petitioner.

10. So far as the judgment in Sukhwant Singh Versus State of Haryana (Supra) and Gourav Doomra Versus State of Punjab (supra) are concerned, the facts of those cases are completely different from the facts of the present case inasmuch as in the present case, the vehicle from which the recovery has been effected belongs to the brother of the petitioner and the petitioner is said to have been driving the said vehicle from which the contraband was ultimately recovered.

11. In view of the above facts and in view of the bar under Section 37 of the NDPS Act, the petitioner does not deserve the concession of regular bail and therefore, the same is hereby dismissed.

(JASJIT SINGH BEDI)
JUDGE

15.07.2022

JITESH

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