

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.44507 of 2021

Date of Decision: 23-02-2022.

Jaspreet Singh @ Gori

...Petitioner

Versus

State of Punjab

...Respondent

(Heard through Video-Conferencing)

CORAM: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present: Mr. Kamaldeep Singh Sidhu, Advocate,
for the petitioner.

Mr. C.L.Pawar, Senior DAG, Punjab.

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MEENAKSHI I. MEHTA, J.

By way of the instant petition, the petitioner has made the second attempt to seek the relief of regular bail in the criminal case arising out of the FIR bearing No.99 dated 21.12.2020 registered at Police Station Bajakhana District Faridkot, under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (here-in-after referred to as 'the Act').

Bereft of unnecessary details, the allegations, as levelled in the subject FIR, are that the petitioner, along-with his co-accused, was apprehended while travelling in the Car bearing Registration No.PB-04-AA-7996 and the search of the said vehicle resulted in the recovery of three plastic bags containing total 55 kg *poppy husk*.

Status-report filed on behalf of the respondent-State, by way of the affidavit of the Deputy Superintendent of Police, Sub-Division Jaitu,

District Faridkot, along-with Annexure R-1 and its vernacular version, is already available on the file and these documents are taken on the record.

I have heard learned counsel for the petitioner as well as learned State counsel in this petition and have also perused the file thoroughly.

It is pertinent to mention here that the petitioner moved the petition bearing CRM-M No.19589 of 2021 earlier also for seeking the same relief as prayed for in this petition but a perusal of the order, as passed by this Court in the said petition on 12.07.2021, reveals that it has categorically been mentioned therein that after addressing the arguments, when his counsel realised that this Court was not inclined to grant the relief of bail specifically in the eventuality, when the rigour of Section 37 of the Act would be applicable to the case, he sought the permission to withdraw the said first petition and the same was, accordingly, dismissed. Except the longer period of his incarceration, the petitioner has not been able to disclose any other change in the circumstances of the case after the disposal of the said first petition.

Learned counsel for the petitioner has contended that the Investigating Agency has not complied with the mandatory provisions of Section 50 of the Act in the present case and moreover, the petitioner is behind the bars since the date of his arrest, i.e 21.12.2020 and in these circumstances, he deserves the relief as sought in the instant petition. To buttress his contentions, he has placed reliance upon **Sandeep Kumar vs. State of Punjab 2019(4) RCR (Criminal) 741, Jarnail Singh @ Jaila vs. State of Punjab, 2020(1) RCR (Criminal) 302, Sunil vs. State of Haryana**.

2021(3) Law Herald (P&H) 2599, Union of India vs. K.A.Najeeb 2021(1) Law Herald (SC) 613, Gurpreet Singh @ Gopi vs. State of Punjab 2021(1) Law Herald (P&H) 436 and Sukhwant Singh vs. State of Haryana 2022(1) RCR (Criminal) 233.

Per-contra, learned State counsel has argued that the quantity of the *poppy husk*, as recovered from the Car wherein the petitioner was travelling along-with his co-accused, falls within the segment of 'commercial quantity' inviting the rigour of Section 37 of the Act and moreover, the compliance of Section 50 of the Act was not required because the recovery of the said contraband has been effected from the aforementioned vehicle and keeping in view the gravity of the offence committed by the petitioner, this petition be dismissed.

As regards the contention qua the non-compliance of Section 50 of the Act, it is worth-while to mention here that as per the allegations levelled in the FIR, the recovery of the *poppy husk* had been effected from the dicky of the Car and not during the personal search of the petitioner. In these circumstances, the provisions of Section 50 of the Act would not be applicable to the present case in view of the recent observations as made by the Apex Court in Kallu Khan vs. State of Rajasthan LL 2021 SC 731 to the effect that “*the seizure of the contraband was made during the search of the motor-cycle at public place and not from the person of the accused and therefore, the compliance of Section 50 of the Act was not attracted in the case.*”

The observations as made in Sandeep Kumar (supra), Jarnail Singh @ Jaila (supra), Sunil (supra), Union of India (supra), Gurpreet

Singh @ Gopi (supra) and **Sukhwant Singh (supra)** are of no avail to the petitioner to seek the relief in this petition because the facts and circumstances of the case in hand are distinguishable from those of the mentioned above. In **Sandeep Kumar (supra)** and **Jarnail Singh @ Jaila (supra)**, the appellants had preferred the Appeals to challenge their conviction by the trial Court and the Co-ordinate Benches had made observations while discussing the evidence led on the record whereas in the instant case, the trial is still pending and the petitioner has sought the relief of regular bail.

In **Sunil (supra)**, the bail was granted mainly on the ground that the mandatory provisions of Section 50 of the Act had not been strictly complied with whereas in this case, the said provisions would not be applicable in view of the afore-quoted observations made by Hon'ble Supreme Court in **Kallu Khan (supra)**.

In **Union of India (supra)**, the Apex Court has categorically observed in Para 20 that “Section 43-D(5) of the UAPA is comparatively less stringent than Section 37 of the NDPS. Unlike the NDPS where the competent Court needs to be satisfied that *prima facie*, the accused is not guilty and that he is unlikely to commit another offence while on bail, there is no such pre-condition under the UAPA.” It being so, mere period of incarceration of the petitioner would not suffice to extend him the relief of regular bail while ignoring the rigour of Section 37 of the Act.

In **Gurpreet Singh @ Gopi (supra)**, the recovery was effected from the concealed compartment of the Truck and the petitioner was employed as Conductor and therefore, it was observed that it would be

debatable as to whether he had knowledge about the contraband or not whereas in the case in hand, the factum of the petitioner having tried to escape/flee away from the spot as alleged in the FIR itself, speaks volumes of his knowledge regarding the *poppy husk* which was not recovered from any concealed compartment and was, rather, allegedly kept in the dicky of the Car wherein he was travelling.

In *Sukhwant Singh (supra)*, the petitioner was not present at the time of the alleged recovery and was not named in the FIR and rather, none was found present near the Canter at the time of the alleged recovery of the contraband whereas in the present case, the name of the petitioner finds specific mention in the FIR and he was apprehended at the spot and was, thus, present at the time of the alleged recovery of *poppy husk*.

Keeping in view the above-discussed facts and circumstances as well as the gravity of the offence as alleged to have been committed by the petitioner, this Court is of the considered opinion that he (petitioner) does not deserve the relief of regular bail. Resultantly, the petition in hand stands dismissed accordingly.

However, it is clarified that nothing contained here-in-before shall be construed to be an expression of the opinion of this Court on the merits of the case.

(MEENAKSHI I. MEHTA)
JUDGE

23rd February, 2022.
seema

Whether speaking/reasoned?	Yes
Whether Reportable?	No