

113

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

CRM-M-34451-2022 (O&M)

Date of decision : 06.08.2022

Sonu Singh @ Soni

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Rahul Arora, Advocate for the petitioner.

Mr. Sarabjit S. Cheema, AAG, Punjab.

VIKAS BAHL, J. (ORAL)

This is a petition filed under Section 482 of Cr.P.C. for setting aside the order dated 19.04.2021 (Annexure P-5), vide which, the petitioner has been declared as proclaimed offender in FIR No.127 dated 11.11.2018 registered under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (Section 25 of the NDPS Act has been added later on) bearing Case No.NDPS/226/2019 titled State Vs. Sonu Singh and others and all the subsequent and consequent proceedings arising therefrom.

Learned counsel for the petitioner has submitted that in the present case, recovery of 10 grams of heroin was effected from co-accused Tejinder Pal Singh @ Teju and the petitioner was specifically made an accused in the present case by virtue of Section 25 of the NDPS Act to the

effect that he was the owner of the vehicle i.e., the motorcycle, which was being driven by co-accused. It is further submitted that the petitioner was also nominated as an accused in FIR No.39 dated 28.02.2019 registered under Sections 302 and 120-B of the Indian Penal Code, 1860 and Sections 25 and 27 of the Arms Act, 1959 at Police Station City Ferozepur, District Ferozepur and was arrested in the said FIR No.39 dated 28.02.2019 on 19.04.2019. It is contended that the petitioner was arrested in the present FIR No.127 dated 11.11.2018 on 20.07.2019 after being taken on production warrant and that the petitioner was granted bail in FIR No.127 dated 11.11.2018 on 06.08.2020. It is further contended that challan in the present case was presented in the absence of petitioner as the petitioner was in judicial custody in the other FIR No.39 dated 28.02.2019 and the said fact was even noticed by the trial Court, as is apparent from zimni order dated 08.01.2021 reproduced at page 8 of the paper book and the petitioner was granted regular bail in the said FIR No.39 vide order dated 16.11.2021 (Annexure P-6) by a Coordinate Bench of this Court. It is argued that in spite of the fact that the Court was aware that the petitioner was in custody in another case, yet, the petitioner was declared as proclaimed offender on 19.04.2021 (Annexure P-5) in FIR No.127. It is further argued that the petitioner was not even aware about the fact that the challan had been presented in the said case and since, the petitioner was in custody thus, he could not possibly appear in the proceedings of FIR No.127. It is further submitted that the petitioner would appear within a period of two weeks from today before the trial Court and thus, prays that the impugned order be set aside and the petitioner be directed to be released on bail.

Notice of motion.

On advance notice, Mr. Sarabjit S. Cheema, AAG, Punjab, appears and accepts notice on behalf of the State and has opposed the present petition and has submitted that as is apparent from order dated 19.04.2021 (Annexure P-5), since, the petitioner who had been granted bail had not appeared before the Court and proclamation had also been issued, thus, the petitioner had been rightly declared as proclaimed offender.

This Court has heard the learned counsel for the petitioners and has perused the paper book.

FIR No.127 dated 11.11.2018 was registered on account of recovery of 10 grams of heroin from co-accused Tejinder Pal Singh @ Teju. The petitioner was specifically implicated in the case with the aid of Section 25 of the NDPS Act being the owner of the vehicle which was being driven by co-accused. The petitioner was also nominated as an accused in FIR No.39 dated 28.02.2019 and in the said case, the petitioner was arrested on 19.04.2019 as is apparent from Arrest Memo (Annexure P-2). The petitioner was in custody in the said case uptill 16.11.2021 on which date, a Coordinate Bench of this Court was pleased to grant regular bail to the petitioner vide order dated 16.11.2021 (Annexure P-6) in CRM-M-48371-2019. The trial Court in the proceedings in pursuance of FIR No.127 was aware about the fact that the petitioner was confined in jail as the said fact had been duly noticed by the trial Court in its zimni order dated 08.01.2021, which has been reproduced at page 8 of the paper book. In spite of the above fact, the police did not seek production of petitioner through production warrant in FIR No.127 and the petitioner was illegally declared

as proclaimed offender on 19.04.2021 even though the trial Court evidently had knowledge about the fact that the petitioner was in custody in another matter. The petitioner could not have appeared before the trial Court in the present case without his production warrants being sought. Thus, order dated 19.04.2021 (Annexure P-5) is illegal and deserves to be set aside.

Accordingly, the present petition is allowed and order dated 19.04.2021 (Annexure P-5) is set aside subject to the petitioner appearing before the trial Court within a period of two weeks from today and on his appearance, the trial Court is directed to release the petitioner on bail on his furnishing bail bonds/surety bonds to the satisfaction of the concerned trial Court.

It is made clear that in case, the petitioner does not appear before the trial Court within a period of two weeks, then the present petition would be deemed to have been dismissed.

All the pending miscellaneous applications, if any, stand disposed of in view of the abovesaid order.

06.08.2022

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No