

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

CRM-M-46110-2021 (O&M)
Date of Decision:- 17.3.2022

Nekdeep Kumar @ Sunny ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Ruhani Chadha, Advocate for the petitioner.

Mr. M.S. Dullat, Addl. A.G. Punjab,
assisted by ASI Lakhwinderpal Singh.

GURVINDER SINGH GILL, J.

1. The petitioner seeks grant of regular bail in a case registered vide FIR No. 89 dated 16.5.2020 under Sections 21, 22, 27-A, 29, 31, 61, 85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and Sections 188 and 269 IPC and Section 3 of the Epidemic Diseases Act, 1897 at Police Station Kotwali, District Kapurthala.
2. As per the case of prosecution, on 16.5.2020, when a police party headed by ASI Jaswinder Singh was present in the area of Nazampur for the purpose of conducting checking of vehicles, then a white coloured car bearing registration No.PB-08-EL-1937 (Hundai Venue) was noticed coming at a high speed. However, the driver of the said vehicle, upon noticing the policy party, tried to turn back but in the said process, the car went towards the unpaved portion of the road. One person got out of the car and tried to run away but was apprehended by the police. Upon inquiry, he disclosed his

name as Nekdeep Kumar @ Sunny. It is the case of prosecution that search of the car led to recovery of 17 intoxicant injections which had been kept wrapped in a polythene packet underneath driver's seat in addition to one kilogram of intoxicating powder. It is further the case of prosecution that the recovered contraband was got examined from FSL and the 17 injections were found to contain '*Diazepam*' and the intoxicating powder was found to contain '*Alprazolam*'. It is further the case of prosecution that during the course of interrogation the aforesaid Nekdeep Kumar @ Sunny disclosed names of 8 more persons to be associated with him, which included one Sarabjit Singh @ Loga. It is further the case of prosecution that subsequently another disclosure statement was made by Nekdeep Kumar @ Sunny wherein he disclosed names of 9 more persons to be his associates in the business of drugs. The police apprehended Sarabjit Singh @ Loga from Jaipur on 3.7.2020 while he was accompanied by Varun Kumar. The prosecution claims that Sarabjit Singh @ Loga as well as Varun Kumar suffered disclosure statements to the effect that they had kept concealed 1 kilogram of '*heroin*' in a car, which was lying parked in Kapurthala. Pursuant to aforesaid disclosure statement, the said accused are alleged to have led the police party to the nominated place in Kapurthala on 4.7.2020 and are alleged to have got recovered 1 kilogram of '*heroin*' from a car bearing registration No.PB-09-AE-9217. Several other accused nominated by petitioner were also arrested and substantial quantities of contraband and cash etc. were recovered from them.

3. The learned counsel for the petitioner has vehemently argued that it is a case where he was infact picked up from the gate of the Guardian Hospital,

Jalandhar where he had gone to drop his mother in the morning and has falsely been implicated subsequently by cooking up a false story and the entire incident of the petitioner being picked up from the hospital happens to be recorded in a CCTV camera installed in the hospital. It has further been submitted that although a direction had been issued to the police to get the CCTV footage examined but the police has come out with a reply that no such CCTV footage was found in the DVR.

4. On the other hand, the learned State counsel has submitted that since it is a case where the accused was caught red-handed while in possession of a 'commercial quantity' of contraband, no case for grant of bail is made out. It has further been submitted that the CCTV footage, being referred to by counsel for the petitioner was nowhere found in the DVR and as such, the CD furnished by the petitioner in respect of the alleged footings cannot be relied upon.
5. I have considered rival submissions addressed before this Court.
6. When the matter had been taken up on 12.11.2021, the following order was passed by this Court :-

“During the course of arguments learned counsel for the petitioner submitted that he was in fact picked up by the police from Guardian Hospital, Jalandhar, on the morning of 16.5.2020 when he had gone along with his mother for her treatment and was subsequently implicated in the instant case falsely on the night of 16.5.2020. Learned counsel submits that the entire incident regarding picking up of the petitioner by the police is recorded in CCTV camera

installed in the hospital and the relevant extract from the said CCTV footage is annexed as Annexure P-2.

The Senior Superintendent of Police, concerned, to get the aforesaid CCTV footage examined and to submit his report as regards the aforesaid plea of the petitioner on or before the next date of hearing.

Learned State counsel to get the needful done for conveying the CCTV footage by means of CD or pen-drive.

List on 23.2.2022.”

7. However, when the matter came to be taken up on the next date i.e. on 23.2.2022, reply was filed on behalf of the State by way of an affidavit of Shri Dayama Harish Omparkash, Senior Superintendent of Police, Kapurthala to the effect that CCTV footage had not been furnished to the police. Consequently, this Court had directed the SSP concerned to inform this Court as to what kind of efforts were made by his office for the purpose of procuring the CCTV footage in case the same had not been supplied to the office of the Advocate General, Punjab. On the said date, the petitioner sent CCTV footage in respect of four video clips to the State counsel through WhatsApp. The said counsel had assured that he would forward the same to the instructing official so that the CCTV footage is conveyed to the SSP as well. The matter was, thus, adjourned to 11.3.2022 i.e. today with a direction to the State to furnish requisite information, particularly as regards compliance of order dated 12.11.2021.
8. The State has filed its reply by way of affidavit of Shri Dayama Harish Omparkash, Senior Superintendent of Police, Kapurthala wherein it has been deposed that the deponent i.e. Shri Dayama Harish Omparkash, Senior

Superintendent of Police, Kapurthala has joined as Senior Superintendent of Police, Kapurthala on 1.1.2022 and it was thereafter that he came to know about the present petition and asked the Litigation Incharge to check the status of the inquiry that he came to know that the CCTV footage was not available on record. He deposed that an application dated 11.2.2022 was filed in the High Court for getting a copy of the Pen-Drive but the same was not provided as the deponent is not a party. It has been submitted that the delay caused has been on account of the fact that the Incharge CIA Staff had kept the inquiry with him without making any substantial efforts to procure the CCTV footage in question and that a departmental inquiry has been initiated against Inspector Surjit Singh. It has been further informed in the reply that after the CCTV footage was received from the office of the Advocate General, Punjab on 23.2.2022 and the same was watched. It has been deposed that mother of the petitioner had submitted representation dated 27.7.2020 regarding abduction of her son Nekdeep Kumar from the Guardian Hospital, Jalandhar and regarding the false implication and that an inquiry was conducted by Inspector Surjit Singh, SHO, Police Station Division No. 6, Commissionerate Jalandhar, who sent his report dated 1.8.2020 to the effect that Nekdeep Kumar had dropped his mother outside the hospital for taking medicine and had left the hospital as per his own wishes and that no evidence regarding his kidnapping by the police was found.

9. It has further been stated in the reply that no record of CCTV footage dated 16.5.2020 was available in the hospital as the back-up of CCTV camera is

only for 23 to 25 days. The CCTV footage has been described in Para 4 of the reply, as follows :-

- “(g) That further on seeing the CD/Clips, it has been found that there are four clips in the CD. First Clip is of outside of Guardian Hospital, Jalandhar, in which two cars are parked outside the hospital and a unknown person wearing white coat is going on Scooty near the said cars. This clip is of 05 seconds.
- (h) That the second clip shows a police party standing at the premises of said hospital, this clip is of 8 second. In third clip, Inspector Surjit Singh, SHO, Police Station Division No. 6, Police Commissionerate Jalandhar, is giving bite in press. In this clip, the SHO, Police Station is saying to press that Nekdeep Kumar S/o Naresh Kumar resident of Dhogri road came along with his mother Meena Rani for taking medicine near Milk Bar Chowk and her mother is entering alone in the hospital and boy Nekdeep Kumar was near the car. After taking medicine, his mother went to her house and on arrival at home, she has given intimation to her another son that there is no clue regarding her son (Nekdeep Kumar). As per SHO, in this regard they (police) are doing investigation and watching CCTV Footage. Verification is being done regarding departure of boy Nekdeep Kumar. In the CCTV Cameras of Guardian Hospital, the mother of Nekdeep Kumar is going alone inside the hospital and the Naka is also near the hospital. No fact is found regarding forceful act or someone being taken in custody forcefully. SHO further saying that his brother is saying that they have no grudge with anyone and the have no doubt against anybody. This clip is of 02 minutes and 13 seconds.

- (i) That further the fourth clip shows that police party is standing near Guardian Hospital and no other thing can be seen. This clip is of 07 seconds.”

10. Thus, while it is evident that the police as well as Nekdeep Kumar were present in the hospital at the given time but the video clips are not stated to reflect any forcible abduction of the petitioner. In any case, the question as regards the authenticity of the CCTV footage would be debatable inasmuch as the DVRs installed in the hospital was not found to contain the CCTV footage relied upon by the petitioner, as the CCTV footage automatically gets deleted after about 23 to 25 days for want of storage space (memory). In the present case, apart from the recovery effected from the petitioner, this Court finds that pursuant to the disclosure made by the petitioner, several other accused have been arrested and from whom substantial quantity of contraband and also huge amount of cash etc. has been recovered which could be said to be drug money.
11. In these circumstances, this Court does not find any ground for grant of bail to the petitioner at this stage. The petition, as such, is found to be sans merit and is hereby dismissed.
12. It is, however, clarified that none of the observations made above shall be taken to be an expression on merits of the main case. It is further clarified that the petitioner would be at liberty to lead defence evidence with regard to the CCTV footage, as permissible under law.

17.3.2022

kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned
Whether Reportable

Yes / No
Yes / No