

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

CRM-M-45726-2021

Date of Decision: 18.02.2022

Paramjit Singh alias Pammi

.....Petitioner

VS.

State of Punjab

....Respondent

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

Present: Mr. Parminder Singh Sekhon, Advocate,
for the petitioner.

Mr. Sidakmeet Singh Sandhu, AAG, Punjab.

AMOL RATTAN SINGH, J. (Oral)

Case heard via video conference.

On 01.11.2021, the following order had been passed by this
court:-

“By this petition, the petitioner seeks the concession of 'pre-arrest bail', upon FIR No. 161 having been registered at Police Station Bhikhi, District Mansa, on 30.09.2021, alleging therein the commission of offences punishable under the provisions of Sections 21/29 of the NDPS Act. 1985.

Learned counsel for the petitioner submits that, firstly, the petitioner has been alleged to have been named as an accused on a alleged disclosure statement made in police custody by the person from whom (allegedly) 10 grams of heroin were recovered, as per the case of the investigating agency; and in any case therefore the said statement is not admissible in evidence.

Other than that, he submits that the petitioner has been targeted by the police on account of the fact that his wife had made

a complaint to the Director General of Police, Punjab, as also the Senior Superintendent of Police, Mansa, on 03.03.2021 (copy Annexure P-3), alleging that police officials of Police Station Bhikhi were demanding that the taxi owned by the petitioner be given to them for their official work but they had never paid any rent for the vehicle; and further, when they conducted a raid on the house of the petitioner on 26.02.2021, only the minor daughter of the petitioner was present with the 'almirah' etc. broken and gold ornaments and cash amount of Rs. 1,50,000/- having been taken by them (as alleged). The minor daughter of the petitioner is also alleged to have been arrested on that date.

Without making any comment on the correctness of the aforesaid contentions, notice of motion is issued.

On the asking of the court, Mr. Rana Harjasdeep Singh, D.A.G., Punjab, accepts notice on behalf of the respondent-State.

A copy of the petition be emailed to learned State counsel by counsel for the petitioner today itself.

Adjourned to 20.12.2021.

The SSP, Mansa, is directed to file his own reply to the petition, in view of the serious allegations made.

In the meanwhile, since at this stage the petitioner has made out a case to raise a doubt in the mind of the court, it is directed, exercising jurisdiction even under Section 37 (b) (ii) of the NDPS Act, 1985, that upon the petitioner joining investigation within one week, in case he is sought to be arrested, he would be released on bail, on his furnishing adequate bail and surety bonds to the satisfaction of the arresting officer/Ilaqa Magistrate till the next date of hearing before this court.

He shall also comply with the conditions stipulated in Section 438(2) of the Cr.P.C.

If the arresting officer does not join the petitioner in investigation, he would appear before the learned Ilaqa Magistrate immediately, who would then summon the arresting officer and direct him to join him in investigation, in terms of the order of this

court.”

Pursuant thereto an affidavit dated 17.12.2021 has been filed by the SSP, Mansa, in which it is stated that in fact pursuant to the directions issued by this court in CRWP no.11356 of 2021, filed by the petitioners' wife and other persons, the matter was got inquired into but all the allegations against the police officials were found to be false (of alleged illegal harassment etc.).

As regards the 'present case' registered, it has been stated that there are seven other FIRs registered against him and his wife and that upon his son, Rupinder Singh, having been apprehended by ASI Ujagar Singh of the CIA staff Mansa, 10 grams of heroin were found in the polythene packet alleged to have been thrown by him on the road. He thereafter having been taken into custody, he is stated to have disclosed that he had obtained the said heroin from his father, i.e. the present petitioner.

Learned counsel for the petitioner submits that as regards any genuine investigation done by the police *qua* the allegations made in CRWP no.11356 of 2021, in fact neither the petitioner nor any of his family members were joined in any such inquiry and investigation; and further, despite there being eyewitnesses to the police taking away money etc. from the house of the petitioner, nothing to that effect has been recorded in the inquiry, which is a wholly face saving one.

No comment in that regard is made in this petition, that being the subject matter of a different petition which has been disposed of and consequently the petitioner would avail his remedies in that regard if he

wishes to.

As regards the FIR presently in question, learned counsel for the petitioner reiterates what he had submitted on 01.11.2021, to submit that the only evidence that the police are relying upon to implicate the petitioner is the alleged disclosure statement by his son in police custody, which is actually not admissible in evidence.

Keeping in view the aforesaid facts, with the quantity of heroin alleged to have been recovered from the petitioners' son also being well below commercial quantity, I would find difficult to accept (for the purpose of this petition), what is stated in the FIR simply on the basis of a disclosure statement allegedly made in police custody, and consequently the order passed on 01.11.2021, admitting the petitioner to interim bail even in terms of Section 37(1)(b)(ii) of the NDPS Act, 1985, is made absolute on the same terms and conditions.

[It also needs to be noticed by this court (though not specifically in the context of the FIR in question), that in previous years FIRs of such nature usually stated that recovery of contraband was made from the pocket of the accused apprehended; however ever since judgements regularly started holding that in case of a personal search in the absence of a gazetted officer there would be violation of Section 50 of the NDPS Act, 1985, and consequently the case of the prosecution would fail, now the usual 'narration' in FIRs (in such like situations) is that the accused had thrown a packet containing contraband on the road from where it was recovered in his

presence; or that it was recovered from the motorcycle etc. that he was travelling on.]

February 18, 2022

dharamvir/

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned : YES
Whether Reportable : NO