

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-36607-2019

Date of Decision:24.02.2022

Jaspal Masih

.....Petitioner

Vs.

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Swarn Tiwani, Advocate,
for the petitioner.

Mr. M.S. Nagra, A.A.G., Punjab.

AMOL RATTAN SINGH, J. (ORAL)

Case heard via video conferencing.

By this petition, the petitioner seeks the concession of 'pre-arrest bail', upon FIR No. 87 having been registered at Police Station Gate Hakima, Police Commissionerate Amritsar, on 06.06.2019, alleging therein the commission of offences punishable under the provisions of Sections 21/22/29 of the NDPS Act, 1985 and Section 67 of the Information and Technology Act, 2000.

On 10.12.2019, the following order was passed by this court:-

“Though the petitioner is stated to have been joined investigation pursuant to the order dated 29.10.2019, learned State counsel submits that since the petitions of co-accused of the petitioner, seeking admission to “regular bail”, are coming up on December 16, 2019, this petition may be heard alongwith those petitions, the allegation being that

drugs were being sold upon communications being made from within the jail.

Mr. Sewak has further submitted that in fact the amount shown to be transferred to the Paytm account of the wife of the petitioner was subsequently transferred by his wife to the petitioners' account itself, which learned counsel for the petitioner refutes. Consequently, proof of all such transactions would be produced in court on the next date of hearing, with it made clear that there is no observation being made on the merits of the case by this court at this stage.

Adjourned to 16.12.2019.

To be heard alongwith CRM-M-33309 of 2019.

Interim order to continue till that date only.”

Thereafter, on 17.11.2021 the following order was passed:-

“Pursuant thereto and affidavit dated 02.11.2021 has been filed by the DCP (Law and Order), Amritsar City, which is ordered to be taken on record.

As per the said affidavit the petitioners' brother and mother and some other persons were found to be in constant telephonic touch with each other, with payments having been made through 'Paytm' accounts, with the petitioners' wife stated to have been operating a mobile number in the name of one Raj Kaur.

However, not one line is discernible, even upon query to learned State counsel, to the effect that the petitioner himself was involved in any of those transactions or was operating any of the mobile phone numbers that have been described therein.

Thus, the allegations are against different family members of the petitioner, in addition to other persons allegedly involved in the sale and purchase of contraband.

However, it has then been stated by the DCP that sufficient incriminating evidence is available on record against the petitioner, his wife and brother, Yaqoob Masih.

Hence the insinuation of the DCP would seem to be that because other family members of the petitioner are indulging in such activity, he too is indulging in it.

Even if the DCP is presuming that to be so, on the ground that the entire family is involved in the sale and purchase of drugs, I do not see how that plea is sustainable legally, with no prima facie evidence brought before this court to say that the petitioner is actually indulging in any such transaction.

Yet, the interim order passed in favour of the petitioner is still not being made absolute, just in case this court has missed anything that the DCP has stated in his affidavit or wishes to say otherwise on affidavit.

Consequently, adjourned to 15.12.2021.

The DCP would file yet another affidavit, very clearly stating therein as to whether the petitioner was found directly involved in any manner, in the sale and purchase of contraband as regards the FIR in question, other than his family members being allegedly involved (as per the DCP).

Interim order to continue till then only.”

Pursuant thereto an affidavit dated 14.12.2021 has been filed by
the Deputy Commissioner of Police (Investigation), Amritsar (City), in

which the details of transfer of money to 'Paytm' accounts of mobile phones stated to have been operated by the petitioner and his co-accused Gurmeet Singh @ Happy, as also by his son Ajay Lutri, have been given; with it also stated that the petitioner obviously did not get any mobile phone number issued in his own name or in the name of his wife, but his wife found to be using a phone issued in the name of Raj Kaur, that actually being a false identity given by her (as per the DCP).

What is important is that the DCP has also stated that during the time that the petitioner was in custody in the Central Jail, Amritsar, even during that time money was being paid, from his Paytm ID and further, that money was also being transferred to persons inside the jail during that period when the petitioner was also inside.

Hence, the contention of learned State counsel is that simply because the petitioner tried to use clever methods to not involve himself, would not mean that he is not involved in the matter and he is very much therefore a person who is accused in the matter.

That being so, I would find no reason for this petition to continue, especially in view of the bar contained in Section 37 of the NDPS Act and the evidence led so far (wholly for the purpose of this petition), being *prime facie* against the petitioner and consequently no opinion even under the provisions of Section 37 (1) (b) (ii) of the said Act can be recorded by this court, to the effect that the petitioner may not be *prima facie* guilty.

Hence, the petition is dismissed.

However, no observation made by this court either in this order or any previous order, would be taken into consideration to determine the

actual guilt or innocence of the petitioner, all such observations having been made only in the context of a petition filed under the provisions of Section 438 of the Cr.P.C.; and naturally, his guilt/innocence would be determined on the basis of evidence gathered/led.

The interim order dated 29.10.2019 stands vacated, with the petitioner to surrender within one week.

February 24, 2022
nitin

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
No.