

216
IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-48764-2021 (O&M)

Date of Decision: 16.05.2022

Pinki

....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. S.S. Rana, Advocate and
Mr. Arvind Kumar Sharma, Advocate, for the petitioner.

Mr. Davinder Bir Singh, DAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

The present petition has been filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No. 0137 dated 23.06.2021, under Section 20 of NDPS Act, registered at Police Station City Rajpura, District Patiala, Punjab.

As per the allegations which are contained in the FIR which was lodged on the basis of an information received by the police officials that they were going in connection with patrolling and checking against suspicious persons and when on reaching near Roshan Colony, Ward No.5, kalka Road, Rajpura at about **10.30 A.M.**, then a lady aged about 40 years who was seen transferring something from a white colour plastic bag to another bag from a black colour Scorpio vehicle bearing No. HR-26-BH-1480 and on seeing the police she became nervous and suddenly after

throwing the bag on ground which was in her hand she started running towards the gali and then she was stopped and caught by the police officials and there was a recovery of 32.500 Kgs. of ganja.

Mr. S.S. Rana, learned counsel appearing on behalf of the petitioner has submitted that in the present case the petitioner has been falsely implicated. He further submitted in pursuance of the orders passed by this Court on 07.01.2022 the SSP has now filed an affidavit before this Court. While referring to para No.10 of the affidavit, he submitted that a Special Investigation Team was thereafter constituted and it has been found that on 23.06.2021 the police party headed by Assistant Sub Inspector at about 05.20 A.M left the CIA Staff, Patiala to Rajpura in connection with checking of suspected bad elements and on the way he received secret information against the present petitioner namely Pinki. Thereafter, they reached the Roshan Colony at Ward No.5, Rajpura in the house of Pinki, she was found present in the house and search was conducted alongwith a lady Head Constable namely Manjit Kaur but nothing incriminating was found and then the Scorpio vehicle which was standing in the street was taken alongwith and search was conducted below the bridge, heap of garbage was also searched but nothing incriminating was found and then the petitioner-Pinki as well as Scorpio vehicle were set free and ASI alongwith police party went to Patiala and when he reached at Sanauri Adda, Patiala at about 07.30 A.M, he again received a secret information that after the police party had left the spot, the accused Pinki placed Ganja in a Scorpio vehicle which belongs to Vishal who is the son of the petitioner and thereafter, when the police party again went to Rajpura at about 10.30 A.M they found that the petitioner was transferring something from the white colour plastic bag

to another bag and she was apprehended.

Learned counsel for the petitioner has submitted that the affidavit filed by the SSP is totally contrary to the contents of the FIR. He further submitted that as per the FIR the police party were going for patrolling and searching of suspicious elements and at 10.30 A.M they apprehended the petitioner and there is nothing in the FIR to show with regard to the earlier event which has been stated by the SSP in the affidavit. Apart from the same, he submitted that the contents of the FIR wherein it has been stated that the police party were going for patrolling and searching of suspicious elements are also wrong whereas as per the affidavit filed by the SSP they were going for a specific purpose on the basis of information and once it was on the basis of the information, then the provisions of Section 42 as well as Section 50 of the NDPS Act have not been complied with and, therefore, on the face of it, it is a case where the petitioner has been falsely implicated and the case has been planted upon the petitioner. He further submitted that the petitioner is in custody from 23.06.2021 and thereafter she was granted interim bail by this Court and she has now surrendered and is in custody. He further submitted that the petitioner is a lady aged 40 years and has been falsely implicated in the present case and, therefore, the petitioner may be considered for the grant of regular bail.

On the other hand, Mr. Davinder Bir Singh, learned Deputy Advocate General, Punjab has stated that it is correct that the petitioner is in custody from 23.06.2021 and she was granted interim bail by this Court and now she has surrendered back and is in custody. He further submitted that it is a case where the confiscated quantity was of 32.500 Kgs. of Ganja

petitioner is hit by the bar contained under Section 37 of the NDPS Act.

I have heard the learned counsel for the parties.

This Court after noting down the contentions raised by the learned counsel for the petitioner wherein the learned counsel for the petitioner had stated that the petitioner was picked up in the morning and not at 10.30 A.M as per the FIR had directed the SSP to file his affidavit. Thereafter, the SSP had filed an affidavit. Para No.10 of the affidavit filed by the SSP as well as the relevant portion of the contents of the FIR as translated by the petitioner are reproduced as under:-

“10. That the Special Investigation Team thoroughly investigated the matter and gone through the police record, they joined Investigating Officer ASI Malwinder Singh, ASI Gursharan Singh 662/PTI, ASI Ranpal 2757, ASI Karish Kumar 1416, HC Kulwant Singh 1837, LHC Manjeet Kaur 1083, ASI Patwinder Singh 1691 and recorded their statements, from their statements it came to light that on 23.06.2021 the police party headed by ASI Malwinder Singh of CIA Staff Patiala at about 05.20 AM left the CIA Staff Patiala to Rajpura in connection with checking of suspected had elements, in the way he received secret information against Pinki (petitioner). Then, they reached Roshan Colony, Ward No.5, Rajpura in the house of Pinki, she was found present in the house and search was conducted alongwith lady Head Constable namely Manjit Kaur but nothing incriminating was found and then the Scorpio vehicle which was standing in the street was taken along and search was conducted below the bridge, heap of garbage were also searched but nothing incriminating was found there, then the petitioner Pinki as well as the Scorpio vehicle were set free and ASI Malwinder Singh alongwith police party went to Patiala and when he reached at Sanauri Adda Patiala at

about 07. 30 AM, he again received a secret information that when the police party left the spot the accused Pinki has placed Ganza in the Scorpio vehicle bearing registration No. HT-26-BH-1480 belongs to Vishal son of Pinki (petitioner), to conceal it on some other place now Pinki has placed Ganza in the vehicle, if raid be conducted then Ganza can be recovered from Scorpio vehicle and then ASI Malwinder Singh alongwith police party again went to Rajpura and at about 10.30AM, they found that Pinki (petitioner) seen transferring something from the white coloured plastic bag to another bag from a black colour Scorpio vehicle bearing registration No.HR-26-BH-1480 and on seeing the police party she become nervous and suddenly after throwing the bag on ground which was in her hand started running towards the street and she was apprehended by the police and then Ganza weighing 32 KG 500 Gram was recovered and the same was put into plastic bag and was sealed with seal bearing impression MS and seal after use was handed over to ASI Gursharan Singh. The team members also corroborated the statement of ASI Malwinder Singh.

Relevant portion of FIR

Copy of the Original Rukka, "Head Officer, Police Station City Rajpura, Jai Hind. Today I, ASI alongwith ASI Gursharan Singh 662, ASI Ram Pal 2757, ASI Harish Kumar 1416, HC Kulwant Singh 1837m LHC Majeet Kaur 1083 in a Govt. Vehicle bearing No. PB-11AJ-9266 driver of which was C. Patwinder Dingh No.1691 carrying a laptop and printer were going in connection with patrol and checking against suspicious persons and when on reaching near Roshan Colony, Ward No.5, Kalka Road, Rajpura at about 10.30 a.m, a lady aged about 40 years who was seen transferring something from the white coloured plastic bag to another bag from a Black Colour Scorpio Vehicle bearing No. HR-26-BH-1480 and on seeing the police party she become nervous and

suddenly after throwing the bag on ground which was in her hand started running towards the Gali. I, ASI called her to stop and with the help of other police officials caught her. On asking of her name & address, she disclosed her name as Pinki W/o Late Shinderpal, R/o Roshan Colony, Ward No.5, Kalka Road, Rajpura, Police Station City Rajpura. Her physical details are that she is aged about 40 years, Height 5'3", Complexion Dark, Physic Heavy, then I, ASI took above Pinki near to the Black Colour Scorpio and it was found that some quantity of Ganja was lying scattered out of the thrown bag. Then I, ASI asked the above Pinki about the Scorpio Vehicle and the bag which was thrown by her upon which he disclosed that the Scorpio bearing no. HR-26-BH-1480 belongs to her son Vishal and the bag which was thrown by her contains Ganja thereafter the said Pinki got the plastic bag checked which was lying in the above vehicle and it was found that the said plastic bag was containing Ganja. Then I, ASI requisites a computerized weighing scale from a floor mill (chakki) and got the weight done of recovered Ganja which was found to be 32 Kg. 500 gram Ganja including the weight of plastic bag. Thereafter, I, ASI packed the plastic bag of recovered Ganja and affixed seal with the mark of "MS". The seal after use was handed over to ASI Gursharan Singh".

The petitioner is a lady of the age of 40 years and is in custody from 23.06.2021, although she was released for some time on interim bail by this Court and has surrendered back but a perusal of the aforesaid affidavit filed by the SSP and the contents of the FIR would show that the facts are dichotomous. As per the affidavit filed by the SSP, the police party in the morning had raided the house of the petitioner and nothing was found either from her house or from the car and thereafter the police party

went back, then they received information regarding the petitioner and they came back and at 10.30 A.M she was apprehended. However, a perusal of the FIR would show that there is nothing pertaining to the earlier event in the morning but it only pertains to the event of 10.30 A.M and that too it has been stated that the police officials were going in connection with patrolling and checking against suspicious persons whereas the affidavit of the SSP shows that they had gone back specifically on the basis of the information against the petitioner. Therefore, it was not a case of some chance recovery or a spot recovery but it was a case of secret information and there is nothing on the record to show that the provisions of Section 42 as well as 50 of NDPS Act were complied with. During the course of arguments, a specific query was raised to the learned Deputy Advocate General, Punjab as to whether provisions of Section 42 or 50 of NDPS Act were complied with or not, he has stated on instructions from ASI Darshan Singh that the same was not done. Therefore, on the face of it, it appears that there are chances that the petitioner may have been falsely implicated in the present case in view of the contradictory facts which are stated in the affidavit of the SSP and in the FIR itself. The argument raised by the learned Deputy Advocate General, Punjab with regard to the bar contained under Section 37 of the NDPS Act would not be sustainable in view of the aforesaid facts and circumstances. Therefore, this Court is of more than prima facie view that there are reasons to believe at least at this stage that the petitioner is not guilty of an offence and there is no material available with the State or in the arguments raised by the learned Deputy Advocate General, Punjab to show that in case the petitioner is released on bail, then she may repeat the offence or may flee from justice. Therefore, both the

ingredients for making a departure from the bar contained under Section 37 of the NDPS Act remain satisfied.

In view of the aforesaid facts and circumstances of the present case, this Court deems it fit and proper to grant bail to the petitioner.

Consequently, the present petition is allowed. The petitioner shall be released on regular bail subject to furnishing bail bonds/surety bonds to the satisfaction of the learned trial Court/Duty Magistrate concerned.

All the miscellaneous applications, if any, shall be deemed to be disposed of since the main case has been disposed of.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant for the purpose of deciding the present petition only.

16.05.2022

rakesh

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking	:	Yes/No
Whether reportable	:	Yes/No