

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

209-CRM-M-51429-2022

Date of Decision: 19.12.2022

Bahadur Singh

... Petitioner

VS.

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. LS Sekhon, Advocate for
Mr. PS Sekhon, Advocate for the petitioner

Sandeep Moudgil, J. (Oral)

The petitioner seeks regular bail in case FIR No.135 dated 28.08.2022 under Sections 15-C/27-A/29 of Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Sangat, District Bathinda.

Learned counsel for the petitioner contends that the petitioner was falsely implicated in the present case, and at best, the petitioner can be attributed the recovery of 40 kgs of poppy husk, even if the prosecution story is taken to be a gospel truth, which is, otherwise, non-commercial in nature and that there is no evidence collected by the prosecution, whether the recovery of truck and the car are of same and even the recovery from the truck is not a conscious possession of the petitioner and that the petitioner was merely an occupant of the car. He further states that rest of the 100 kgs of poppy husk, as alleged in the FIR, was recovered from another vehicle bearing registration No.PB-03-AJ-5998 which is 18 tyres ghora truck trailer. He also relies upon the judgment of the Apex Court in **Amarsingh Ramjibhai Barot vs. State of Gujarat, (2005) 7 SCC 550**. Paras 7 to 9 of the said judgment read as under:-

“7. The learned counsel appearing for the appellant urged only one contention in support of the present appeal. He contended that the High Court fell into an error in taking the total quantity of the offending substances recovered from the two accused jointly and holding that the said quantity was more than the commercial quantity, warranting punishment under Section 21(c) of the NDPS Act. He contended that as far as the appellant is concerned, the High Court erred by assuming that there was criminal conspiracy within the meaning of Section 29 of the NDPS Act, and erroneously proceeded under the said section. The High Court fell into a further error of assuming that because Section 29 was applicable, the total quantity of opium recovered was 920 grams plus 4.250 kgs. The counsel urged that because of this error the High Court took the wrong view that the total recovered opium was of “commercial quantity” and, therefore, attracted Section 21(c) of the NDPS Act.

8. Although, at first blush, the argument of the learned counsel appeared attractive, on careful appreciation of the facts on record we are satisfied that the High Court judgment is fully justified and needs to be upheld. It is true that the High Court proceeded on the footing that there was a criminal conspiracy between the appellant and the deceased, Danabhai Virabhai

Rabari. In our view, however, there was no warrant for this conclusion at all as there is no evidence to suggest that there was any such abetment and/or criminal conspiracy within the meaning of Section 29 of the NDPS Act. The appellant and Danabhai Virabhai Rabari were found together, but individually carrying the recovered substances. Hence, it was not possible for the High Court to take the view that Section 29 was attracted.

9. The High Court was justified in its conclusion that the appellant could not have been punished under Sections 17 and 18 of the NDPS Act.”

On the strength of the aforesaid observation and discussion made by the Hon’ble Supreme Court, learned counsel for the petitioner has contended that if two accused were found together, who were individually carrying contraband and there is no evidence of conspiracy, the quantity of contraband carried by both the co-accused could not be carried to bring it within the commercial quantity and Section 29 will not be attracted.

Notice of motion.

On the asking of the Court, Mr. Rajiv Verma, DAG Punjab accepts notice, who has filed custody certificate dated 05.12.2022, which is taken on record. He states that the vehicle in which the petitioner was travelling i.e. Swift car bearing registration No.PB-03-BA-3330 belongs to Harpreet Singh who was driving the said car and the petitioner was accompanying him. He points out that recovery of poppy husk was from the

rear side of the said car tied in two black coloured plastic bags having their mouth tied with jute thread and rest of the 160 kgs poppy husk was recovered from the accompanying vehicle i.e. truck trailer bearing registration No.PB-03-AJ-5998 from 8 black plastic bags looking different from the other bags having their mouth tied with jute thread. He further submits that recovery is of commercial nature which comes to 200 kgs and total poppy husk recovered from both the vehicles i.e. Swift car and truck trailer belonged to the same person i.e. co-accused Harpreet Singh, who is actually the owner of both the vehicles and, therefore, it cannot be termed that the recovery has been effected separately from two individuals to grant any benefit in the light of the observation of the Hon'ble Supreme Court referred to above.

This Court is of the considered view, after going through paras 6 to 9 of the aforesaid judgment, that in the case before the Apex Court, Section 29 of the NDPS Act was ordered to be not applicable on the ground that recovery of contraband was from two different individuals, which was *opium*, measuring 920 gms, from one of the appellants that was from his physical possession and 4.250 kgs of a grey coloured substance from the other accused.

In the present case, the recovery is not from physical possession but was being transported in two separate vehicles and it is also not in dispute that both the vehicles are owned by one and the same person i.e. Harpreet Singh, whom the present petitioner was accompanying and as such was actively involved.

It is not the case of the petitioner that he is not associated with Harpreet Singh in any other manner, and could not convince this Court as to how he has been falsely implicated by the investigating agency with regard to his having no links with the Harpreet Singh or his vehicles, in any manner, whatsoever.

Considering the large quantity of contraband recovered and the active involvement of the petitioner and, as further pointed out by learned State counsel that the petitioner is involved in 3 other cases of NDPS Act, apart from the fact that the petitioner has only undergone 3 months and 6 days custody, as on 05.12.2022, no case is made out, at this stage, for grant of regular bail to the petitioner.

Dismissed.

19.12.2022

V.Vishal

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No
Yes/No