

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

CRM-M-52592-2019.

Date of Decision: 19.05.2022.

Gajjan Singh

....Petitioner.

Versus

Narcotics Control Bureau, Amritsar

....Respondent.

CORAM: HON'BLE MR. JUSTICE LALIT BATRA

Argued by: Mr. Pardeep Bajaj, Advocate for the petitioner.

Mr. Sanjay Vashisth, Advocate (Senior Panel Counsel)
for respondent-NCB.

Lalit Batra, J.

This third petition under Section 439 Cr.P.C. for grant of regular bail has been moved by petitioner-**Gajjan Singh** in NCB Crime No.18 dated 06.04.2018 under Sections 8, 21, 23 and 29 of NDPS Act, registered with Narcotics Control Bureau, Amritsar.

Learned counsel for the petitioner *inter alia* contended that the allegations levelled against the petitioner are totally concocted, false and frivolous and there is no iota of truth therein. He further urged that allegedly during the intervening night of 05/06.04.2018 troops of BSF in the AOR of BOP-Ramkot had recovered four packets of suspected narcotic substance believed to be Heroin and a Pakistani National was also apprehended while his associate was shot dead during the operation, whereas petitioner has no nexus whatsoever with the alleged contraband. He further urged that

allegedly on 06.04.2018 confessional statement of co-accused Sabir Hussain @ Ali Raza was recorded under Section 67 of NDPS Act, wherein Sabir Hussain @ Ali Raza has not uttered name of petitioner. He further urged that though allegedly supplementary statements of Sabir Hussain @ Ali Raza were recorded under Section 67 of NDPS Act, however, name of petitioner did not figure therein. He further urged that though in terms of above said statements of Sabir Hussain @ Ali Raza, nexus is being created that the alleged contraband was to be thrown in the fields where *Barseem* crop was sown and the said field is owned by the petitioner, that story is totally improbable. He further urged that allegedly co-accused Sabir Hussain @ Ali Raza, who is stated to be running a racket with Indian smugglers on the mobile phone, however, no nexus could be related to the petitioner with the alleged mobile phone as well as SIM card recovered from co-accused Sabir Hussain @ Ali Raza *vis-a-vis* the Indian number +91 9915887593 stated to be in contact. He further urged that the officers who are invested with powers under Section 53 of the NDPS Act are 'police officers' within the meaning of Section 25 of Evidence Act, as a result of which, any confessional statement made to them would be barred under the provisions of Section 25 of Evidence Act and cannot be taken into account in order to convict an accused under the NDPS Act. He further urged that a statement recorded under Section 67 of the NDPS Act, cannot be used as a confessional statement in the trial of an offence under the NDPS Act and to this effect, he has placed reliance on decision of Hon'ble Supreme Court in case **Tofan Singh Vs. State of Tamil Nadu, (2021)4 Supreme Court**

Cases 1. He further urged that though allegedly statement of petitioner was recorded but nothing incriminating was recovered at the instance of petitioner. He further urged that as a matter of fact, petitioner has been arrayed as accused on account of mistaken identity as another person namely Gajjan Singh son of Mahinder Singh, resident of village of petitioner is having a criminal record and said Gajjan Singh remained confined in Pakistan jail and he is involved in number of cases registered against him in India and currently he is absconding from the process of law and to this effect, he has placed on record copy of order dated 18.07.2019 (Annexure P-9) passed in case FIR No.82 dated 08.05.2019 under Sections 3, 4, 5 and 9 of Official Secrets Act, Sections 21 and 29 of NDPS Act and Section 120-B of IPC, registered at Police Gharinda, District Amritsar, wherein said Gajjan Singh son of Mahinder Singh, resident of Chak Allah Baksh, Police Station Lopoke, District Amritsar, has been admitted to bail by the Additional Sessions Judge, Amritsar. He further urged that petitioner is aged about 68 years and is suffering from multiple ailments and for treatment thereof, he has already undergone two surgical interventions. He further urged that Kirpal Singh @ Pallu (son of petitioner) has also been falsely involved in the present case, however, said Kirpal Singh @ Pallu has already been extended concession of pre-arrest bail by this Court, vide order dated 17.10.2018 passed in CRM-M-33282-2018 (Annexure P/6). He further urged that since contraband (3 Kilograms-980 grams Heroin) was allegedly recovered from co-accused Sabir Hussain @ Ali Raza, no conscious possession of said contraband can be extended to the petitioner and, thus, rigours of provisions of Section 37 of NDPS Act cannot be

attracted against the petitioner. He further urged that petitioner is languishing in custody since 19.04.2018 and though final report has already presented in the Court, but the trial is going on at snail's pace. He further urged that since trial of the case would take sufficient time to conclude, no useful purpose would be served by keeping the petitioner in custody further and he may be released on bail.

On the other hand, learned Senior Panel counsel for respondent-NCB while opposing instant petition has vehemently argued that in the intervening night of 05/06.04.2018 troops of BSF in the AOR of BOP-Ramkot had recovered four packets of suspected narcotic substance believed to be Heroin and a Pakistani National was also apprehended while his associate was shot dead during the operation. He further urged that BSF officials had handed over the above said Pakistani National, dead body of killed Pakistani intruder alongwith contraband to the NCB. He further urged that on weighment, total contraband came to 3 Kilograms and 980 grams. He further urged that Pakistani National had disclosed his identity as Sabir Hussain @ Ali Raza, whereas another intruder, who was shot dead, whose identity was disclosed as Rashid Ali son of Rehmat. He further urged that co-accused Sabir Hussain @ Ali Raza had disclosed that the above said contraband was to be received by the owner of the earmarked land, which belongs to a person resident of village Chak Allah Baksh and whose land is situated between Pillar No.95/26-27 on both sides of the Border fencing and that person has sown the *Barseem* crop over the said land. He further urged that above said land was verified by co-accused Sabir Hussain @ Ali Raza

and on further verification, the owner of said field was found to be Gajjan Singh son of Ajaib Singh, resident of village Chak Allah Baksh, Police Station Lopoke, District Amritsar (petitioner). He further urged that even otherwise, petitioner while joining investigation got recorded his statement under Section 67 of NDPS Act and claimed above said land to be owned by him. He further urged that accused Gajjan Singh and his son Kirpal Singh @ Pallu had exclusive rights to go to above said agricultural land as it is abutting the international border. He further urged that as per Chemical Analysis report dated 16.04.2018, all the samples answered positive test for Diacetylmorphine (Heroin). He further urged that since petitioner had connived with co-accused in smuggling of contraband (commercial quantity), thus, in view of bar created by Section 37 of NDPS Act, petitioner does not deserve the concession of bail.

I have heard learned counsel for the parties and have carefully gone through the record of the case.

Allegedly, contraband (Heroin weighing 3 Kilograms-980 grams) was recovered from co-accused Sabir Hussain @ Ali Raza. In view of ratio of **Tofan Singh**'s case (supra), decided by Hon'ble Supreme Court, the complicity of the petitioner on the basis of confessional statements of co-accused Sabir Hussain @ Ali Raza as well as confessional statement of petitioner recorded under Section 67 of NDPS Act, would remain debatable. Allegedly, no recovery of contraband was effected from the petitioner.

At this stage, without commenting anything on the merits of the case and further the fact that petitioner is languishing in custody since

19.04.2018 and the trial of the case would take sufficient time to conclude, no useful purpose would be served by keeping the petitioner in custody further, thus, he deserves the concession of bail.

In view of above, instant petition for grant of regular bail moved by petitioner-**Gajjan Singh** is allowed and he is ordered to be released on bail on his furnishing personal bond and surety bond to the satisfaction of Trial Court/Chief Judicial Magistrate/Duty Magistrate, Amritsar, as the case may be.

(LALIT BATRA)
JUDGE

19.05.2022
jitender

Whether speaking/ reasoned : Yes/ No

Whether Reportable : Yes/ No