

In virtual Court

CRM-M-55250-2019

-1-

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-55250-2019 (O&M)
Date of decision: 15.02.2022

Major Singh @ Jasbir Singh @ Dodhi

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Vipul Jindal, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for grant of regular bail in FIR No.4 dated 20.04.2019 under Sections 21, 25, 29 of NDPS Act and Section 25 of Arms Act, registered at Police Station State Special Operation Cell, District Amritsar.

Learned counsel for the petitioner submits that as per allegations in the FIR, on 20.04.2019, SI Amandeep Singh received a secret information against three persons namely Major Singh @ Jasbir Singh @ Dodhi (petitioner), Sukhdev Singh @ Sunny and Satnam Singh @ Satta that they are having links with Pakistani smugglers and have received consignment of heroin. As per the

information, the petitioner has handed over his Bolero car for the said purpose. It is case of the prosecution that after receiving the ruqa in the police station, the case was registered, co-accused Satnam Singh @ Satta was arrested and recovery of 870 grams of heroin and one country made pistol was effected from him. It is further submitted that after a gap of about 10 days, the petitioner along with co-accused Sukhdev Singh @ Gurdev Singh @ Sunny were arrested on 30.04.2019.

Learned counsel has referred to the report under Section 173 (2) Cr.P.C. to submit that it has come that while conducting the investigation in this case, when one co-accused Satnam Singh @ Satta was arrested on 20.04.2019, further information was received by Inspector Inderdeep Singh that the petitioner along with co-accused Sukhdev Singh @ Gurdev Singh @ Sunny are roaming on a motorcycle of co-accused Sukhdev Singh @ Gurdev Singh @ Sunny and they can be apprehended. As per the secret information, photographs of these two accused i.e. petitioner and co-accused Sukhdev Singh @ Gurdev Singh @ Sunny were handed over to the police officials and thereafter, when they were allegedly apprehended, a notice under Section 50 of NDPS Act was given, in which a joint consent memo was prepared by the Investigating Officer on 30.04.2019 (Annexure P-2). Learned counsel has also referred to a judgment of the Hon'ble Supreme Court in **State of Rajasthan Vs. Parmanand and anr., 2014 (5) SCC 345**, to submit that a joint consent memo is not a proper compliance of Section 50 of NDPS Act, as no independent offer is given to both the accused. Learned counsel has further referred to the report under Section

173 (2) Cr.P.C., wherein the offer says that the petitioner and co-accused have a right to be searched before a Gazetted Officer or Magistrate, who are known to them. As per consent memo, search of a black coloured bag is to be conducted, whereas in the report under Section 173 Cr.P.C., it is stated that recovery was effected from right pocket of the petitioner, from where a black coloured packet was recovered.

Learned counsel for the petitioner has next submitted that co-accused of the petitioner, namely Sukhdev Singh @ Gurdev Singh @ Sunny, who was arrested with the petitioner, after 10 days of registration of the FIR, has already been released on bail by the Hon'ble Supreme Court vide order dated 03.01.2022. The operative part of the order reads as under: -

“...Heard learned counsel appearing for the petitioner, learned counsel appearing for the State of Punjab and carefully perused the material available on record, including the counter-affidavit filed by the State.

Taking into considering the fact that the petitioner is reported to be in jail for more than 2 years and 7 months and there being no likelihood of completion of trial in the near future, which facts are not controverted by the learned counsel appearing for the State of Punjab, we are inclined to enlarge him on bail.

The petitioner, therefore, directed to be released on bail, subject to such terms & conditions which the concerned trial Court shall deem fit and appropriate to impose upon him...”

It is lastly argued that the petitioner is first offender and he was not known to any secret informer, who handed over the alleged photograph of the petitioner to the police; he is in custody for the last 02 years and 09 months and out of total 17 prosecution witnesses, only 06 PWs have been examined, therefore, it will take long time in conclusion of the trial and also in view of the fact that recovery is marginally higher than the commercial quantity.

Learned State counsel, on the basis of status report by way of affidavit of Deputy Superintendent of Police, Counter Intelligence, Amritsar, has not disputed the factual position with regard to the fact that first secret information was received on 20.04.2019, when co-accused Satnam Singh @ Satta was arrested and thereafter, on 30.04.2019, another secret information was received regarding the petitioner and co-accused Sukhdev Singh @ Gurdev Singh @ Sunny that they are roaming on a motorcycle carrying some intoxicant substance. It is further submitted that report under Section 173 (2) Cr.P.C. was presented on 17.10.2019; charges were framed on 29.11.2019 and out of total 25 prosecution witnesses, 07 PWs have been examined.

After hearing learned counsel for the parties, without commenting anything on merits of the case and considering the fact that the petitioner is first offender; he is in long custody of 02 years and 09 months; his co-accused Sukhdev Singh @ Gurdev Singh @ Sunny, who was owner of the motorcycle and arrested at the same time, has already been released on bail by the Hon'ble Supreme Court vide order dated 03.01.2022 and also in view of the fact that out of total 25 prosecution witnesses, only 07 PWs have been examined so far and

In virtual Court

CRM-M-55250-2019

-5-

it will take some time in conclusion of the trial, this petition is allowed and the petitioner is directed to be released on regular bail subject to furnishing his bail/surety bonds to the satisfaction of the trial Court/Illaqa Magistrate/Duty Magistrate, concerned.

Petition is disposed of.

[ARVIND SINGH SANGWAN]
JUDGE

15.02.2022
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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No