

CRM-M-2142-2021

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-2142-2021
Reserved on: 11.01.2023
Pronounced on: 24.01.2023

Sukhwinder Singh ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. K.S. Sidhu, Sr. Advocate with
Mr. Praagbir S. Dhindsa, Advocate
for the petitioner.

Mr. Harsimar Singh Sitta, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
64	13.12.2020	GRP, Amritsar	409, 120-B IPC (Act No.45 of 1860) and Section 59 of NDPS Act (Act No.61 of 1985)

1. The petitioner apprehending arrest in the FIR captioned above, has come up before this Court under Section 438 CrPC seeking anticipatory bail.
2. In paragraph 20 of the bail petition, the accused declares that he has no criminal antecedents.
3. Counsel for the petitioner submits that the petitioner was implicated in the present FIR because of rivalry in the police department. The petitioner’s counsel further argued that the custodial investigation would serve no purpose whatsoever, and the pre-trial incarceration would cause an irreversible injustice to the petitioner and family.
4. State’s counsel opposes the bail, including the interim.
5. Counsel for the parties had apprised this Court that SLP(Crl) No.8221/2022 filed by the co-accused was dismissed, however, later on, after one month of custody, the trial Court had released him on bail vide order dated 03.12.2022, copy of the said order has been handed over in the Court today and the same is taken on record.

REASONING:

6. Indisputably, the quantity allegedly involved in this case is commercial. Given this, the rigours of S. 37 of the NDPS Act apply in the present case. The burden is on the petitioner to satisfy the twin conditions put in place by the Legislature under Section 37 of the NDPS Act.

7. Vide order dated 18.01.2021, Co-ordinate Bench of this Court had stayed the arrest of the petitioner.

8. The status report filed by the State, reads as under:-

“.....2. That precisely, the prosecution case against the petitioner and other co-accused is that on 13.10.2020 and 21.10.2020, as per the orders from the senior officers, co-accused Inspector Sukhwinder Singh No. 179/GRP being SHO of the Police station G.R.P., Amritsar was required to deposit parcels of the case properties relating to the NDPS cases in the centralized storehouse (malkhana) of Police Commissionerate, Amritsar after taking it in his custody from the judicial storeroom (malkhana) but after taking the custody of the case properties from the judicial storeroom, he did not deposit the said case properties in the centralized storeroom at Amritsar on the same day and took away those case properties at his official residence situated in the same Police station G.R.P, Amritsar. Thereafter, he in connivance with the petitioner (MHC Kuljit Singh) and Raj Kumar @ Tita replaced the narcotic substances from parcels of the case property with sham materials (tea powder etc.) after breaking Open the seals affixed on them and then it was resealed with the forged similar seals. Later on, those parcels were deposited as case properties in the centralized storeroom, Amritsar on 14.10.2020 and 22.10.2020 respectively after showing the compliance of the procedure with formal documentation. The narcotic substance taken out of the parcels were misappropriated and given to co-accused Vinod Kumar for the purpose of sale through co-accused Raj Kumar @ Tita. It is pertinent to mention here that the centralized storehouse (malkhana) of Police Commissionerate, Amritsar remains open for 24 hours in a day and the petitioner was required to deposit the case properties on the same day i.e. on 13.10.2020 and 21.10.2020, after taking its custody from the judicial storeroom.

3. That the racket operated by co-accused Inspector Sukhwinder Singh, SHO of the Police station G.R.P., Amritsar along with the petitioner and other co-accused was busted on 09.11.2020, when sub-Inspector Baljinder Singh of CIA Staff, Amritsar arrested co accused Vinod Kumar son of Kishore Kumar resident of Flat No. 56, 3rd Floor, Maqboolpura, Amritsar from Pannu Chowk, Dapai Road, Amritsar and recovered one kilogram smack (Heroin) from him and a FIR No. 301 dated 09.11.2020 under section 21 & 22 of the NDPS Act, was registered against him at the Police Station Gate Hakiman, Amritsar City. During interrogation, aforesaid co accused Vinod Kumar suffered a disclosure statement dated 09.11.2020 before the investigating officer disclosing therein that he had purchased the recovered smack (Heroin) from co-accused Raj Kumar @ Tita son of Dildar Masih resident of Gawal Mandi, Amritsar by paying him an amount of Rs. 80,000/- for the purpose of further sale and money was to be paid to him after the sale. On the basis of the aforesaid disclosure statement, Raj Kumar @ Tita was nominated as a co-accused in the said case and arrested on 09.11.2020. During interrogation, he

suffered a disclosure statement dated 09.11.2020 before the investigating officer disclosing that the smack (Heroin) recovered from co accused Vinod Kumar was given by him to Vinod Kumar, which was procured by him from the petitioner, who was posted as a MHC of the Police station G.R.P., Amritsar, on the promise of payment of Rs. 70,000/- and it was further sold on credit by him to Vinod Kumar for Rs. 80,000/-. He further disclosed that earlier also, he was given charas and ganja four to five times for sale by petitioner and he had paid the money to him after selling the same.

4. That on the basis of the aforesaid disclosure statement of co accused Raj Kumar @ Tita and the petitioner was nominated as a co-accused in the case.

5. That when the matter came to the notice of the Director General of Police, G.R.P (Punjab), Chandigarh, he directed the Superintendent of Police (Investigation), G.R.P (Punjab), camp at Jalandhar to look into the whole case personally and submit his enquiry report vide order dated 18.11.2020. The Superintendent of Police (Investigation), G.R.P (Punjab). Camp at Jalandhar Submitted his detailed enquiry report dated 10.12.2020. The true translation of the concluding paragraph of the aforesaid enquiry report is produced for the kind perusal of this Hon'ble Court as under :

"Inspector Sukhwinder Singh, Station House Officer of the Police Station GRP, Amritsar and LR/ASI Kuljit Singh No. 185, MHC of Police Station G.R.P, Amritsar being public servants misused the authority of their responsible important posts in connivance of each by not complying with the necessary guidelines for the disposal of the case properties of the NDPS Act after obtaining the same from judicial storerooms (Malkhana) for the purpose of depositing it in the centralized storeroom (Malkhana) and they intentionally kept the case properties of 36 cases in their quarters in the Police station and then dishonestly broke seals of the case properties to take it out with the help of Raj Kumar @ Tita sweeper and thereafter completed its weight by mixing other substances and re-affixing seals and committed criminal breach of trust. In case FIR No. 42 dated 22.06.2006 under section 21 NDPS Act, there was one parcel of 1 K.G 230 gram smack and one parcel of 1 K.G 480 gram smack with 2/2 red coloured seals of MJS/BS per parcel in total 4 red coloured seals were affixed, which were broke open and thereafter 2/2 seals were re-affixed after committing the acts and in case FIR No. 79 dated 22.07.2006 under section 15/61/85 NDPS Act of P.S. GRP, Amritsar, there was one parcel of case property poppy husk weighting 7 kilo 750 grams and it is evident that seals were newly affixed on it with a black coloured sealing wax (lak), so required legal action should be taken against Inspector Sukhwinder Singh, LR/ASI Kuljit Singh No. 185 and Raj Kumar @ Tita after taking legal opinion from D.A (Legal)."

6. That in meantime, the petitioner sent an affidavit through e-mail dated 25.11.2020 to the Assistant Inspector General of Police, G.R.P. (Punjab) giving the details of the modus-operandi used by co-accused Inspector Sukhwinder Singh, for committing misappropriation of the case properties cases pertaining to the NDPS cases in connivance with co-accused Raj Kumar @ Tita and Sunny. He further stated that he (co-accused Inspector Sukhwinder Singh) had sold ½ kilogram smack (heroin) and 6 kilograms ganja to two unknown persons after taking Rs. 2,50,000/- and Rs. 16,000/- respectively from them in his presence. He

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further stated that Inspector Sukhwinder Singh gave 10 kilograms of poppy husk to Kamaljit Kumar, PSO of the ADGP, Railways after breaking open the seals of the case property in his presence. The petitioner claimed that he was innocent in the entire matter and has been falsely implicated in the case.”

9. This Court had dismissed the bail of the co-accused/Kuljit vide order dated 22.08.2022 passed in CRM-M-44368-20220. Since the petitioner has a clean track record in his entire service, it would give a long way to show that prima facie in case he is sent to custody for token and formality, it would might have a huge financial, social and mental impact on the petitioner. Given above and the fact that the petitioner was granted bail by the trial Court, the petitioner makes out a case for bail.

10. Given above, provided the petitioner is not required in any other case, the petitioner shall be released on bail in the FIR captioned above, in the following terms:

(a). Petitioner to furnish personal bond of Rs. Ten thousand (INR 10,000/-); AND

(b) To give one surety of Rs. Twenty-five thousand (INR 25,000/-), to the satisfaction of the concerned investigator/SHO. Before accepting the surety, the concerned officer must satisfy that if the accused fail to appear in court, then such surety can produce such accused before the court.

OR

(b) Petitioner to hand over to the concerned investigator/SHO a fixed deposit for Rs. Ten Thousand only (INR 10,000/-), with the clause of automatic renewal of the principal and the interest reverting to the linked account, made in favour of the 'Chief Judicial Magistrate' of the concerned district. The fixed deposit may be made from any of the banks where the stake of the State is more than 50% or any of the well-established and stable private sector banks. The fixed deposit need not necessarily be made from the petitioner's account.

(c). In case of the launching of the prosecution, the said fixed deposit be forwarded to the concerned court along with the police report/challan under 173 CrPC.

(d). Such court shall have a lien over the deposit until the case's closure, or discharged by substitution, or up to the expiry of the period mentioned under S. 437-A CrPC, 1973, and at that stage, subject to the proceedings under S. 446 CrPC, the entire amount of fixed deposit, less taxes if any, shall be endorsed/returned to the depositor.

(e). It shall be the discretion of the petitioner to choose between surety bonds and fixed deposits. It shall also be open for the petitioner to apply to the Investigator or the concerned court to substitute the fixed deposit with surety bonds and vice-versa.

(f). On the reverse page of personal bond, the petitioner shall mention her/his permanent address along with the phone number, preferably that numbers which is linked with the AADHAR, and e-mail (if any). In case of any change in the above particulars, the petitioner shall immediately and not later than 30 days from such modification intimate about the change to the concerned police station and the concerned court.

(g). The petitioner is to also execute a bond for attendance in the concerned court(s) as and when asked to do so. The presentation of the personal bond shall be deemed

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acceptance of the declarations made in the bail petition and all other stipulations, terms, and conditions of section 438(2) of the Code of Criminal Procedure, 1973, and also of this bail order.

11. Within fifteen days from today, the petitioners shall forward to the Investigator/SHO and the complainant/victim(s) the complete details of bank account numbers with addresses, fixed deposits, DEMAT account numbers, the current market value of jewelry, sovereign metals, all precious articles, held either individually or jointly, and cash-in-hand. ***If the petitioner fails to comply with this condition, then on this ground alone, the bail might be canceled, and the complainant may file any such application for the cancellation of bail, and State shall file the said application.***

12. Within fifteen days from today, the petitioner shall procure a smartphone and inform its IMEI number and other details to the SHO/I.O. of the Police station mentioned before. The petitioner shall always keep the phone location/GPS on the "ON" mode. Whenever the Investigating officer asks to share the location, the petitioner shall immediately do so. The petitioner shall neither clear the location history, WhatsApp chats, calls nor format the phone without permission of the concerned SHO/I.O. This condition shall continue till the completion of the trial or closure of case, whatever is earlier.

13. In return for the protection from incarceration, the Court believes that the accused shall also reciprocate through desirable behavior. ***It is clarified that in case the petitioner does not mend his ways and repeats the offence or indulge in criminal behaviour, then in all future matters, the concerned courts shall keep it as a factor that this court had afforded a final opportunity to the petitioner to reform and live a normal life but did not mend his ways.***

14. The conditions mentioned above imposed by this court are to endeavour that the accused does not repeat the offence and to ensure the safety of the witnesses, victim, and their families. In Sushila Aggarwal, (2020) 5 SCC 1, Para 92, the Constitutional Bench held that unusually, subject to the evidence produced, the Courts can impose restrictive conditions. In Sumit Mehta v. State of N.C.T. of Delhi, (2013) 15 SCC 570, Para 11, Supreme Court holds that while exercising power Under Section 438 of the Code, the Court is duty-bound to strike a balance between the individual's right to personal freedom and the right of investigation of the police. While exercising utmost restraint, the Court can impose conditions countenancing its object as permissible under the law to ensure an uninterrupted and unhampered investigation. In Mohammed Zubair v. State of NCT of Delhi, Writ Petition (Criminal) No 279 of 2022, Para 29, decided on July 20, 2022, A Three-Judge bench of Hon'ble Supreme Court holds that "The bail conditions imposed by the Court must not only have a nexus to the purpose that they

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seek to serve but must also be proportional to the purpose of imposing them. The courts while imposing bail conditions must balance the liberty of the accused and the necessity of a fair trial. While doing so, conditions that would result in the deprivation of rights and liberties must be eschewed.”

Petition allowed in aforesaid terms. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

24.01.2023
anju rani

Whether speaking/reasoned: Yes
Whether reportable: No.