

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Sr. No.216

CRM-M-2953-2023 (O&M)

Date of decision : 12.04.2023

Amrik Singh

..... Petitioner

VERSUS

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. P.S. Sekhon, Advocate, for the petitioner.

Mr. G.S. Dhillon, AAG, Punjab.

SUDHIR MITTAL, J. (Oral)

Short reply dated 11.04.2023 has been filed in Court on behalf of the State of Punjab. The same is taken on record.

The petitioner seeks regular bail in case FIR No.57 dated 13.07.2022, registered at Police Station Kheri Gandain, District Patiala, under Sections 21, 22 & 29 of the NDPS Act, 1985.

According to the contents of the FIR, written ruqa was received from the SHO, Police Station Kheri Gandain for registration of case against the petitioner under Sections 21 & 22 of the NDPS Act, 1985. The ruqa was sent because while on patrolling duty, a secret informer informed the SHO that the petitioner was involved in selling intoxicants and that he was coming towards Rajpura on his activa carrying contraband with him. If, barricading was done, he could be arrested. Thereafter, according to the Case Diary, the petitioner was spotted coming towards the naka on an activa scooter. Seeing the police in strength, he left his scooter and ran away. The search of the scooter led to recovery to 700 tablets of Tramadol and 07 grams heroin.

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Learned counsel for the petitioner has submitted that the petitioner voluntarily surrendered on 23.09.2022 after coming to know of his false implication in the aforementioned FIR. Even, after the surrender, the petitioner has not been identified by the police personnel present at the naka as the person who ran away from the spot. The activa is alleged to be have been purchased by the petitioner on the basis of receipt Annexure R-1/T which is nothing more than a sale letter, wherein, the purchaser is mentioned as 'Amrik Singh' and the witness is also mentioned as 'Amrik Singh'. Signature of the purchaser is in Punjabi language and the signature of the witness is in English language. The said receipt came in possession of the police as one Rajnish Kant son of Om Prakash gave it to the police on 24.09.2022. The reason for him having come to the police on the next day after surrender by the petitioner is not forthcoming and seems to be an attempt to make the police case stronger. The petitioner has been in custody in excess of six months and the trial is not likely to be concluded at an early date as only charge has been framed as yet. There is no other criminal case pending against the petitioner. Section 37 of the NDPS Act, 1985 would not be attracted as no recovery was effected from the petitioner and the identity of the petitioner has also not been established.

Custody certificate dated 11.04.2023 checked by Sh. H.S. Gill, Addl. Superintendent, Central Jail, Patiala has been submitted in Court. The same is taken on record. A perusal thereof shows that the petitioner has undergone actual custody of 06 months and 18 days and there is no other criminal case pending against him.

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Learned State counsel concedes that only charge has been framed as yet. He, however, opposes the bail application on the ground of recovery of commercial quantity and Rajnish Kant son of Om Prakash having identified the petitioner in his statement.

The facts which are not in dispute are that recovery was effected on 13.07.2022 and that the petitioner surrendered on 23.09.2022. The said recovery has not been effected from the petitioner nor he has been identified by the police officials present at the naka as being the person who escaped from the spot. Receipt Annexure R-1/T has been given to the police by Rajnish Kant son of Om Prakash on 24.09.2022.

The aforementioned undisputed facts clearly show that the police personnel present at the naka have not made any statement identifying the petitioner as the person who ran away from the spot. The only evidence pointing to the involvement of the petitioner is the receipt Annexure R-1/T and the statement of Rajnish Kant son of Om Prakash. The statement of said Rajnish Kant son of Om Prakash does not mention the reason for him having come forward to deposit the receipt Annexure R-1/T with the police on 24.09.2022 i.e. the very next day after the petitioner surrendered. The receipt by itself cannot be considered to be evidence of the petitioner having purchased the activa scooter because the purchaser and the witness are both 'Amrik Singh' and signature of the witness is in English language. The parentage of the witness is not mentioned. The signature of the petitioner is in Punjabi, whereas, in the memo of arrest dated 23.09.2022 his signature is in English. The said signature is also different from the signature of the

witness in English language. Thus, the veracity of the receipt Annexure R-1/T is doubtful.

There is no evidence to link the petitioner with the crime. He has been in custody for 06 months and 18 days and there is no other criminal case pending against/decided against him. The rigor of Section 37 of the NDPS Act, 1985 is not attracted in this case as it is doubtful, whether, the petitioner committed the offence. Thus, the petition is allowed and it is directed that the petitioner be released on bail on his furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

Nothing stated hereinabove shall be deemed to be an opinion on the merit of the case.

12.04.2023

Ramandeep Singh

Whether speaking / reasoned

Whether Reportable

(SUDHIR MITTAL)

JUDGE

Yes

No