

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-10926-2023

Date of Decision.:24.03.2023

Mohit alias Dhandi

.....Petitioner

Vs.

State of Punjab

.....Respondent

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Manish Soni, Advocate
for the petitioner.

Mr. Parneet Singh Pandher, AAG, Punjab.

DEEPAK GUPTA, J.

The petitioner is seeking regular bail by way of this petition filed under Section 439 Cr.P.C in case FIR No.85 dated 08.05.2022 registered under Section 120-B of IPC; Section 21 & 29 of NDPS Act and Section 25 of the Arms Act registered at Police Station City STF, District SAS Nagar, Mohali.

2. It is contended by Ld. Counsel that petitioner did not participate in the alleged offence; that he has been falsely implicated with the aid of Section 120-B of the IPC; that he was not present at the time of recovery; that no CCTV footage could be found regarding the evidence in respect of identification of the persons involved in delivering the contraband; that the only evidence pleaded against him is his disclosure statement and that of co-accused, which are legally not permissible. Learned counsel for the petitioner further contends that it transpired during investigation that petitioner was lodged in Bhondsi Jail, Gurugram and was having threat from

some anti-party lodged in the jail, who were planning to eliminate him and therefore, he had asked his friend Pawan Nehra to implicate him (petitioner) in a case of NDPS Act in State of Punjab, so that petitioner can be transferred to some jail in State of Punjab and his life could be saved. It is further contended that as per the investigation conducted by the police itself, petitioner neither purchased nor possessed any contraband and rather, on his request to transfer his jail from State of Punjab, alleged contraband was arranged by the co-accused and police was informed so as to implicate him in a case in the State of Punjab for transfer of the jail. Learned counsel also pointed out that no recovery whatsoever has been effected from petitioner. Even there is no evidence either in the shape of recovery of mobile phone or any call detail record to prove the allegation of criminal conspiracy against him. Petitioner has also given details of other cases pending against him and has prayed for regular bail.

3. Opposing the petition it is submitted in the status report filed by the respondent-State in the form of affidavit of Shri Vavinder Kumar, PPS, Deputy Superintendent of Police, Special Task Force, Border Range, District Amritsar that information was received on 08.05.2022, as per which petitioner, confined in Gurgaon jail in a case registered under Section 302 of the IPC was indulging in smuggling drugs and illegal weapons from jail and had sent consignment of heavy quantity of heroine and illegal weapons through his accomplice to be delivered to some smuggler of Amritsar and that said consignment was to be delivered on the road leading from Vallah bye-pass Amritsar to Mehta road and that if trap is laid, accomplice of the petitioner and smuggler of Amritsar dealing in heroine and illegal weapons

could be apprehended. It is further submitted that trap was laid at the disclosed place but no one came. During search, police party found a white coloured wrapper lying at Mehta road towards the road leading to Village Hothian side near the water tank and on checking, they recovered wrapper containing heroine weighing 500 grams therein, apart from 4 country made pistols of .315 bore; 20 live cartridges of .315 bore, 2 country made revolvers of .32 bore and 20 live cartridges of .32 bore.

4. It is further contended by Ld. State counsel that after obtaining production warrant from the Court, petitioner was arrested in this case on 29.09.2022 and during his interrogation, he suffered disclosure statement revealing his involvement in various crimes including that of murder, extortion and attempt to murder. It was further disclosed by the petitioner that he was confined in Bhondsi Jail, Gurgaon, where his anti-party was also lodged and he was facing threats of elimination from the said anti-party. He had requested his friend Tilak Singh, who used to come to the jail to meet him to arrange shifting of his jail from Gurgaon to Punjab with the help of their another friend Pankaj Nehra, who was stated to have joined the gang of Lawrence Bishnoi. It was also disclosed by the petitioner that in January, 2022, Tilak met him in jail and disclosed about the planning to implicate him (present petitioner) in the case of the recovery of the contraband and weapons, so that he could be shifted from Bhondsi Jail, Gurgaon to Punjab. Thus, in his disclosure statement petitioner nominated Tilak Singh and Pawan Nehra to be the accused. Offence under Section 120-B of the IPC was added.

5. Learned State counsel submits further that co-accused Pawan

Nehra was arrested on 05.10.2022 and he also suffered disclosure statement, as per which he had made a plan to transfer the jail of the petitioner from Bhondsi Jail, Gurgaon to Punjab in connivance with the petitioner and the co-accused Tilak Singh. It was also disclosed by said Pawan Nehra that contraband recovered in this case i.e. 500 gram of heroine and the weapons belonged to him, which were kept by him at the place of recovery and that he had leaked the information intentionally in order to bring it the knowledge of the police officials. Police report also reveals that as per FSL report, the contraband was found to be having ingredients of Diacetylmorphine. After completion of investigation, report under Section 173 Cr.P.C. has already been filed against petitioner Mohit alias Dandi and co-accused Pawan Nehra, though remaining accused namely Tilak Singh, Harkesh and Vinod Yadav are yet to be arrested.

6. Learned State counsel has also pointed out towards the numerous cases registered against the petitioner and submitted that in view of his criminal antecedents and gravity of the offence, petitioner does not deserve to be released on bail particularly keeping in view the bar contemplated under Section 37 of the NDPS Act.

7. I considered submissions of both the sides and have perused the record carefully.

8. It is admitted position that at the time when recovery of 500 grams of heroine and the weapons was effected, the petitioner was confined in Bhondsi Jail, Gurgaon and thus, recovery was not effected from the conscious possession of the petitioner. The role of the petitioner is the conspiracy, in as much as by implicating him in a case registered at Punjab,

he wanted to get his jail transferred from Bhondsi Jail, Gurgaon to somewhere in Punjab. Even as per investigation carried out by the police, it has emerged that contraband and the weapons were arranged by co-accused Pawan Nehra, who also intentionally leaked the information to the police. In these circumstances, whether on the basis of conspiracy, petitioner can be assumed to be in conscious possession of the contraband will be a moot point and subject matter of trial.

9. No doubt that as per the details given in the reply to the petition and the custody certificate, petitioner is involved in 11 cases including the present case but he has already been acquitted in one of the murder case arising out of case FIR No.770 of 2015 registered at Police Station Civil Lines, Gurugram. In other case of murder registered against him vide FIR No.198 dated 24.06.2020 registered at Police Station SM Nagar, Faridabad, petitioner is on bail as allowed vide order dated 30.09.2022 in CRM-M-42047-2022, copy of which is placed on record as Annexure P-6. Rest of the cases are pertaining to extortion or jail offences besides two cases under Section 307 IPC. Thus, no other case under the provisions of the NDPS Act is registered against the petitioner.

10. Apart from above, it has been held by Hon'ble Supreme Court in *Maulana Mohd Amir Rashadi v. State of U.P., (2012) 3 SCC 382* that merely on the basis of criminal antecedents, the claim of the petitioner for grant of bail cannot be rejected and that it is the duty of the Court to find out the role of the accused in the case, in which he has been charged and other circumstances such as possibility of his fleeing away from the jurisdiction of the Court etc.

11. Further, the only evidence collected against the petitioner is his own disclosure statement and that of co-accused Pawan Nehra. It has been held in *Tofan Singh v. State of Tamil Nadu (2021) 4 SCC 1* by Hon'ble Supreme Court that a confessional statement recorded under Section 67 of NDPS Act will remain inadmissible in trial of an offence under the NDPS Act. In view of the said legal position, the bail cannot be denied to the petitioner simply on the basis of disclosure statement suffered by him or his co-accused. In *State by (NCB) Bengaluru v. Pallulabid Ahmad Arimutta 2022 (1) RCR (Criminal) 762*, arrest was made by NCB on the basis of confessional statements of co-accused under Section 67 of the NDPS Act. It was held by Hon'ble Supreme Court that such a disclosure statement cannot form basis for over turning the orders releasing the accused on bail. In *Surinder Kumar Khanna v. Intelligence Officer Directorate of Revenue Intelligence, 2018 (3) RCR (Criminal) 954*, it has been held that confessional statement of co-accused recorded under Section 67 of the NDPS Act cannot by itself to be taken as substantive piece of evidence and can at best be used or utilized in order to lend assurance to Court.

12. Apart from above, as per jail certificate petitioner is in custody for the last 9 months and 20 days. Challan against him has already been filed. Trial may take time to conclude.

13. Having regard to all the aforesaid facts and circumstances, particularly, the role attributed to the petitioner in the crime to the effect that contraband was not recovered from his conscious possession and at that time he was confined in jail, but without commenting anything further on the merits of the case, petitioner is admitted to bail on his furnishing bail

bonds/surety bonds to the satisfaction of the Learned Trial Court/Duty Magistrate concerned.

14. However, this order is subject to the condition that petitioner shall not tamper with the evidence during trial; he shall not pressurize or intimidate any prosecution witness; he shall appear on each and every date of hearing before the Court, unless his personal presence is exempted on some pressing ground; that petitioner shall not commit an offence similar to the offence of which he is charged nor shall directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to tamper with the evidence. In case of breach of any of the conditions, the prosecution will be at liberty to move appropriate application for cancellation of the bail.

15. It is further made clear that nothing observed in this order should be construed as an expression of opinion on the merits of the case.

March 24, 2023
Neetika Tuteja

(DEEPAK GUPTA)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No