

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

CRA-D No. 243 of 2022(O&M)

Date of Decision: May 26 , 2023.

Dharminder Singh @ Dhanna

..... APPELLANT (s)

Versus

National Investigation Agency

..... RESPONDENT (s)

**CORAM:- HON'BLE MRS.JUSTICE LISA GILL
HON'BLE MRS.JUSTICE RITU TAGORE**

Present: Mrs. Baljit Mann, Senior Advocate with
Mr. Rishav Soni, Advocate
for the appellant.

Mr. S.S.Sandhu, Special Prosecutor
for respondent-NIA.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

1. Appellant is aggrieved of rejection of his petition for bail pending trial in FIR No.RC-03/2020/NIA/DLI dated 22.01.2020 under Sections 13/17 of UA(P) Act, and Sections 21/29 of NDPS Act, Police Station NIA, New Delhi and FIR No.75 dated 31.05.2019 under Sections 21/25/27A/29 of NDPS Act, Police Station Tarsika, Amritsar.

2. Brief facts necessary for adjudication of this matter are that, FIR No.75 dated 31.05.2019 under Sections 21/25/27A/29 of NDPS Act was registered at Police Station Tarsika, Amritsar with three persons as accused, namely, Jajbir Singh Samra, Harpreet Singh @ Happy and Varinder Singh Chahal. Said FIR was registered with the allegations that police party headed by ASI Manjit Singh of Police Station Tarsika laid a Naka on the basis of secret

information. A Hyundai Verna car bearing registration No. PB46-U-4761 coming from Sarao side was signalled to stop, but driver of the car tried to flee. The car was, however, apprehended. 400 gms of heroin from Jajbir Singh Samra, 90 gms heroin from Harpreet Singh @ Happy and 10 gms heroin from Varinder Singh Chahal was recovered. Cash amount of ₹1,20,000/- alongwith other material was also recovered. Nirmal Singh @ Neeldhari was arrested during course of investigation by the State Special Operation Cell, Amritsar and on the basis of disclosure by Nirmal Singh @ Neeldhari, one Satpal Singh and Hira Lal were arrested for mobilizing proceeds from drug trafficking.

3. Investigation of the matter was handed over to National Investigating Agency (NIA) by the Central Government, New Delhi vide order dated 20.01.2020. Matter was re-registered as NIA case. Present appellant was nominated as an accused on account of disclosure statement of Jajbir Singh Samra and Harpreet Singh @ Happy who were apprehended on the spot. The appellant is alleged to be the owner of Maruti Ritz car bearing registration No.PB10-CY-6061 which was used in drug trafficking. It is alleged that the appellant used to purchase drugs from co-accused Jajbir Singh Samra (arrested on the spot) for self consumption as well as for sale of the same. As per prosecution case, the accused persons are involved in running a narco-terror network which was controlled by one Harmeet Singh @ PHD, a self-styled chief of Khalistan Liberation Force. The network is stated to be comprised of a number of elements involved in buying/selling of heroin and channelizing the proceeds through non-banking channel of Hawala operators to Dubai and Pakistan. Insofar as allegations against the present appellant are concerned, it is alleged that he used to procure drugs from accused Jajbir Singh Samra and vehicle bearing

registration No.PB10-CY-6061 owned by the appellant was actively used by him and accused Harpreet Singh @ Happy in the said activities. It is on the disclosure statement of Harpreet Singh @ Happy that Maruti Ritz car bearing registration No.PB10-CY-6061, belonging to the appellant, was recovered from the bushes near Jandiala canal bridge (*pul nahar*).

4. Challan was presented against the accused persons including the appellant. Charges against the accused including the appellant were framed on 06.09.2021. Appellant has been alleged of being part of a larger conspiracy for trade of heroin in India and for using its proceeds to further the activities of banned Khalistan Liberation Force and reviving the wave of terrorism in the State of Punjab. Appellant has also been charged under Sections 25/29/27/27A of the NDPS Act. Appellant's application seeking bail pending trial was dismissed by the Special Judge, NIA, Punjab, SAS Nagar (Mohali) vide impugned order dated 01.02.2022. Aggrieved therefrom, present appeal has been filed.

5. Learned senior counsel for the appellant vehemently argued that there is no evidence on record to point out complicity of appellant in the commission of offences as alleged. It was contended that appellant was not named in the FIR, neither was he arrested on the spot. Furthermore, the vehicle in which three accused who were initially arrested, does not belong to the appellant. Recovery of any narcotic or any currency with the taint of drugs was not effected from the appellant. Entire case of the prosecution against the appellant rests upon disclosure statement of co-accused Harpreet Singh @ Happy, Jajbir Singh and disclosure of the appellant himself. The same, it was contended, besides being weak evidence does not reveal any active role of the appellant in the commission of offences as alleged. Recovery of car belonging to

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the appellant is denied being relevant as the recovery, it was contended, was not in consonance with the provisions of law. Various spots which are stated to have been identified by the appellant, it was further submitted, were already in the knowledge of the investigating agency. Furthermore, no evidence has come on record to indicate that appellant was ever involved in drug trafficking, leave alone be a part of the narco-terror network. Merely to bring the matter under the NIA, supplementary statement of the appellant was recorded to reflect the appellant to be part of the terror gang. It is submitted that as per prosecution case, the appellant himself was a consumer of narcotics, therefore, it is not possible that he would have been involved in trafficking of the same as well. Learned counsel for the appellant further argued that even as per prosecution version, at best a peripheral role has been attributed to the appellant who has been in custody since 08.06.2020. Out of 137 witnesses, only 10 have been examined, therefore, learned Special Judge, NIA has wrongly denied bail pending trial to the appellant. It was, thus, prayed that this appeal be allowed, order dated 01.02.2022 be set aside and concession of bail pending trial be afforded to the appellant.

6. Per contra, learned counsel for respondent-NIA refuted the arguments as raised and submitted that evidence on record clearly points out to the appellant being a part of the narco-terror network. He submitted that in this racket, drug addicts are identified and they are used for further peddling. Each of the person involved in the offence is a vital link for smooth functioning of the illegal activity. It was further contended that conduct of the appellant, who is involved in a number of other cases, disentitles him for the concession of bail.

Admittedly, the appellant, it was submitted, was declared a proclaimed offender

and it is only when the pressure became unbearable that appellant surrendered on 08.06.2020. Learned counsel for the respondent while referring to disclosure statement of the appellant himself, recorded on 13.06.2020 and 29.09.2020, submitted that appellant who had studied upto 10th standard had gone to Thailand, Singapore and then to Malaysia in the year 2005 and returned to India in the year 2006. Appellant has narrated that he was employed by a Sarpanch of Dhudike village to collect principal amount and interest of the money which was lent by the Sarpanch to various small shopkeepers. There is narration of various cases in which the appellant was involved and how he came in touch with Harpreet Singh @ Happy and also became a consumer of heroin from 2017 onwards. It is stated therein that the appellant alongwith Harpreet Singh @Happy on 13.05.2019 went to buy heroin from Jajbir Singh Samra but to due to unavailability thereof Jajbir Singh Samra asked them to come on the next day. Appellant handed over his Maruti Ritz car bearing registration No.PB10-CY-6061 to Harpreet Singh @Happy asking him to take the heroin from Jajbir Singh Samra and come to the house of the appellant. Harpreet Singh @Happy informed that the appellant's car was parked in bushes near Jandiala canal bridge (*pul nahar*) and that he was going to buy heroin from Jajbir Singh Samra. Jajbir Singh Samra was, however, arrested alongwith two others on 31.05.2019. Appellant's car was recovered on disclosure by Harpreet Singh @Happy.

7. The appellant further revealed that he established direct contact with Harmeet Singh @PHD and was directly buying heroin from him with the condition that he would help in the cause of Khalistan. The money received by him after selling heroin was handed over to Nirmal Singh @ Neeldhari who would further channelize the proceeds through various Hawala operators of

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Amritsar and Delhi and send it to Jasmeet Singh Hakimzada, a resident of Dubai. Learned counsel for the respondent submits that call detail records of the mobile numbers of the accused were analysed and it was found that the appellant was frequently in touch with Jajbir Singh Samra. Appellant, it is further submitted, is involved in six other cases details of which are as under:-

- “(i) FIR No.73 dated 04.09.2013 under Sections 15/18/21/22 NDPS Act and Sections 420/465/467/468/471/120B IPC, Police Station Badhni Kalan.
- (ii) FIR No.92 dated 16.12.2003, under Sections 324/34 IPC Police Station Badhni Kalan.
- (iii) FIR No.75 dated 02.11.2014 under Sections 307/34 IPC and Sections 25/57 Arms Act, Police Station Badhni Kalan.
- (iv) FIR No.51 dated 13.08.2004, under Section 324 IPC Police Station Badhni Kalan.
- (v) FIR No.134 dated 20.11.2014 under Sections 15/18/21/22/25 NDPS Act, Police Station Badni.
- (vi) FIR No.139 dated 15/11.2009 under Sections 302/307/148/149 IPC and Sections 3/4 of the SC/ST Act, Police Station Mehana, District Moga.”

8. It is submitted by learned counsel for the respondent that recently co-accused Jasmeet Singh Hakimzada has been arrested and his interrogation shall throw further light on complicity of the appellant in this case. Moreover, argument raised by learned counsel for the appellant that call detail records do not indicate any connectivity between the appellant and Harpreet Singh @Happy, cannot be a ground for grant of bail to the appellant whose connectivity with Jajbir Singh Samra and Varinder Singh Chahal who are reflected to be in touch with Jasvir Singh @ Shera and Harmeet Singh is very much on record. It is, thus, prayed that this appeal be dismissed.

9. We heard learned counsel for the parties at length and have gone through part of the record which was produced in Court.

10. Present appellant is alleged to be a part of a narco-terror network, himself being a consumer of narcotics. Insofar as the appellant being a consumer of narcotic is concerned, he has not denied the same but has sought to explain that by virtue of being a consumer, he could not be a trafficker. Though the appellant has not been named in the FIR and was not arrested at the spot on 31.05.2019, it cannot be said that by virtue of the same, his complicity is absolutely suspect. It is matter of record that after arrest of the three accused, namely, Jajbir Singh Samra, Harpreet Singh @ Happy and Varinder Singh Chahal, the matter was further investigated, firstly, by the State Special Operation Cell, Amritsar and ultimately, the matter was handed over to National Investigating Agency (NIA) on 20.01.2020 keeping in view the facts which were unearthed.

11. It is further a matter of record that Maruti Ritz car bearing registration No. PB10-CY-6061, belonging to the appellant, was recovered at the instance of accused, Harpreet Singh @ Happy. We do not find any merit, at this stage, in the argument that mere recovery of the car at the instance of Harpreet Singh @ Happy cannot indicate complicity of the appellant in the narco-terror network as is alleged. No explanation worthy of acceptance in this regard has come forth. In the given factual position, reliance by learned counsel for the appellant on the judgment of the Honb'ble Supreme Court in Venkatesh @ Chandra and another v. State of Karnataka, 2022(2) RCR (Criminal) 885 is of no avail.

12. We have also perused the report regarding the call detail records.

Though direct call records between the appellant and Harmeet Singh are not available, there is a history of calls between co-accused Jajbir Singh Samra and Varinder Singh Chahal, who were in touch with Jasvir Singh @ Shera and Harpreet Singh. *Prima facie* connection between accused has been established. Similarly, the argument that if the appellant is himself a consumer of narcotics he cannot be involved in trafficking of the same, is absolutely bereft of any merit, hence rejected.

13. It is further a matter of record that the appellant was declared a proclaimed offender in this case as he initially evaded arrest as is the fact that he is involved in a number of cases as detailed in the foregoing paras. Though learned senior counsel for the appellant had argued that the appellant has been acquitted in some and on bail in the other cases, we do not find that to be relevant in the peculiar circumstances of this case.

14. At this juncture, another important aspect which needs to be considered is the rigours of Section 37 of the NDPS Act, which reads as under:-

“37. Offences to be cognizable and non-bailable.--(1)
Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) –

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable -for offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless-

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not

likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) of any other law for the time being in force, on granting of bail.”

15. Learned counsel for the appellant has relied upon judgment of the Hon’ble Supreme Court in Mohd. Muslim @ Hussain v. State (NCT of Delhi), 2023 AIR (SC) 1648 to vehemently argue that the appellant is entitled to the concession of bail. The Hon’ble Supreme Court in Mohd. Muslim @ Hussain (supra) has held as under:-

“19. A plain and literal interpretation of the conditions under Section 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.

20. The standard to be considered therefore, is one, where the court would look at the material in a broad manner, and reasonably see whether the accused’s guilt may be proved. The judgments of this court have, therefore, emphasized that the satisfaction which courts are expected to record, i.e., that the accused may not be guilty, is only prima facie, based on a reasonable reading, which does not call for meticulous examination of the materials collected during investigation (as held in Union of India v. Rattan Malik¹⁹). Grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the imperative of Section 436A which is applicable to offences under the NDPS Act too (ref. Satender Kumar Antil supra). Having regard to these factors the court

is of the opinion that in the facts of this case, the appellant deserves to be enlarged on bail.”

16. Argument on behalf of the appellant is that as the charge framed against the appellant is under Section 120B IPC and Sections 25/27/27A/29 of the NDPS Act only, it can be reasonably assumed that the appellant is not guilty of the offences as charged in the given facts and circumstances. However, we do not find any merit in this argument for the reason that in the given factual matrix, allegations against the appellant being a part of the network, in question, cannot be negated at this stage in a perfunctory manner. Recovery of the appellant's car at the instance of the accused, namely, Harpreet Singh @ Happy who was duly apprehended at the spot and is *prima facie* found to be deeply entrenched in narco-terror network, cannot be brushed aside as is sought to be urged by learned senior counsel for the appellant. Moreover, antecedents and conduct of the appellant in evading his arrest is also an aspect which needs to be considered.

17. Gainful reference in this regard can be made to the judgment of three judges' Bench of the Hon'ble Supreme Court in **Narcotics Control Bureau v. Mohit Aggarwal**, 2022(3) RCR (Criminal) 985 wherein it has been held as under:-

“14. To sum up, the expression "reasonable grounds" used in clause (b) of Sub-Section (1) of Section 37 would mean credible, plausible and grounds for the Court to believe that the accused person is not guilty of the alleged offence. For arriving at any such conclusion, such facts and circumstances must exist in a case that can persuade the Court to believe that the accused person would not have committed such an offence. Dove-tailed with the aforesaid satisfaction is an additional consideration that the accused person is unlikely to commit any offence while on bail.

15. We may clarify that at the stage of examining an application for bail in the context of the Section 37 of the Act, the Court is not required to record

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a finding that the accused person is not guilty. The Court is also not expected to weigh the evidence for arriving at a finding as to whether the accused has committed an offence under the NDPS Act or not. The entire exercise that the Court is expected to undertake at this stage is for the limited purpose of releasing him on bail. Thus, the focus is on the availability of reasonable grounds for believing that the accused is not guilty of the offences that he has been charged with and he is unlikely to commit an offence under the Act while on bail.”

18. Similarly, argument that charge against the appellant itself does not indicate his complicity in the offences, is again of no avail to the appellant in view of the discussion in the foregoing paras. In our considered opinion, it is not possible, after a *prima facie* consideration of the material on record, to record our satisfaction that the appellant is not guilty and is unlikely to commit any offence while on bail.

19. No other argument has been raised.

20. Keeping in view the facts and circumstances as above, this appeal is dismissed.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

May 26 , 2023.
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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No