

Ashok Sawhney

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Saurabh Sharma, Advocate
for the petitioner.

Mr. Karan Garg, AAG, Haryana.

ARUN MONGA, J. (ORAL)

Petitioner seeks bail in case bearing FIR No.323 dated 08.12.2022, registered under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') at Police Station, Sadar Ambala, District Ambala.

2. Prosecution version of the case, as per the FIR, translated copy of which is contained at Annexure P-1, relevant thereof, *in verbatim*, is extracted as below:

"it is submitted that today I, S.I along with S.I Balkar Singh No. 336, H.C.Ranjit Singh No230 E.S.I Niranjana Singh No866 E.H.CAvtar Singh No891 in government vehicle NoHR03T 8829 being driven by CtPrince No784 at around 6.30 P.M with our laptop and printer for patrolling from the C.I.A Staff – 1 Ambala city and patrolling towards sector-8 Ambala City Manav Chowk Railway Road via Ambala City at about 7.00 P.M and reached at Lyallpur Basti near Gurudwara Saheb was present that the secret informer informed me that Amlesh Sahni s/o Jogindra resident of village Mohari Thana Tariyani District Shivhar (Bihar) and Ashok Sahni s/o Ganor Sahni r/o village Harinagar Mahindwara District Sitamarhi Bihar they bring opium from Bihar and sell it in the surrounding areas of Ambala city. That they are still standing near Ambala Dwar on Jamitgarh Road Ambala City carrying opium in a cloth bag. If Amlesh Sahni and Ashok Sahni are raided immediately, then they standing near the Ambala gate can be apprehended along with opium. That the information is sure and reliable. On which the request was made for the information of through E.H.C. Avtar Singh 891 is being sent to the police station and at around 7-20 P.M. I called from my mobile no. 9416145606 upon mobile phone no. 9416145606 and belonging to DSP Ambala Mr. Joginder Sharma and informed about the secret information and prepared a notice u/s 42 NDPS ACT and sent through Balkar Singh 336/A to DSP Ambala Mr. Joginder Sharma and. I, Sub-Inspector By informing the situation to the people coming on the way, told about

the raiding party involved, but all the people went away from the spot by telling their legitimate compulsions. At which time, around 7-40 p.m., I, S.I prepared a raiding party of fellow employees and two boys standing near Ambala Gate on Jamitgarh Road Ambala City, one of whom had a gray colored cloth bag in his hand and the second one was empty-handed, apprehended them both after receiving signal from the informer, and asked their names and addresses. The boy carrying the cloth carrybag told his name to be AmleshSahni s/o Jogindra resident of village Mohari Thana Tariyani District Shivhar (Bihar) and the other boy told his name to be Ashok Sahni s/o GanorSahni r/o village HarinagarMahindwara District Sitamarhi Bihar. I told both the boys that IS.I suspects you to be in possession of opium. You have a legal right that you can get your search done in front of a magistrate or a gazetted officer, then they can be called on the spot. Upon which I prepared separate notices under Section 50 NDPS ACT, on which witnesses have signed their respective signatures and the accused AmleshSahni and Ashok Sahni have expressed their consent that we want to get our search done by a gazetted officer. On which I, S.I tried to contact the gazetted officers by looking at the list of gazetted officers in their mobile phones. At about 8:50 P.M. I S.I from my mobile phone no. 9416145606 called Shri Baljinder Singh Sub Divisional Agriculture Officer on his mobile phone no. 9416458365, Ambala and informed about the situation. And requested him

to reach at the spot. That at about 09:10 P.M Shri Baljinder Singh, Sub-Divisional Agriculture officer, Ambala came on the spot to whom the situation was explained and Mr. Baljinder Singh, Sub Divisional Agriculture Officer, Ambala, searched the clothes of the employee involved in the raiding party related to intoxicant was the informer, on which no recovered from the employee. The search was prepared separately and then I, S.I. produced AmleshSahni and Ashok Sahni along with the above notice under section 50 NDPS ACT to Mr. Baljinder Singh Sub-Divisional Agriculture Officer, Ambala on which MrBaljinder Singh Sub Divisional Agriculture Officer, Ambala gave his identity to AmleshSahni and Ashok Sahni. After telling and making inquiries, the notice u/s 50 NDPS ACT was endorsed as 'SEEN' and instructed me to search the accused persons, on which I, S.I. on searching the grey colour cloth bag held in the hand of AmleshSahni, opium was recovered on the basis of experience from inside a polythene, which was extracted from AmleshSahni's bag. On weighing with digital scale, it was found to be 3 kg 10 grams including polythene, Therafter, the recovered oplun was put back into the same polythene and cloth bag and parcel was prepared after putting 3 stamps of MP and Mr. Baljinder Singh Sub Divisional Agriculture Officer, Ambala also put 1 stamp of BS on the parcel. Sample seal prepared separately. Parcel-case property was attested by Mr. Baljinder Singh Sub-Divisional Agriculture Officer, Ambala. Upon conducting the search of Ashok Sahni, 80 thousand rupees currency notes were recovered from the left pocket of the pant, who told me that this money we had sold opium to the customers earlier, these 80 thousand rupees belongs to that opium. That a parcel has been prepared of 80 thousand rupees recovered from the accused Ashok Sahni and IS.I put 3 stamps of my stamp MPandMrBaljinder Singh Sub Divisional Agriculture Officer Ambala also put 1 stamp of BS on

the parcel and the parcel of notes were attested by Mr. Baljinder Singh Sub-Divisional Agriculture Officer, Ambala. I, after using the stamp, handed over the specimen stamp to use or keep it to Niranjan Singh 866. Shri Baljinder Singh Sub- Divisional Agriculture Officer, Ambala kept his seal with him. On which parcel of case property containing 3 kg 10 grams of opium was seized in the police by recovery memo and parcel of 80 thousand rupees notes were seized in the police by separate recovery memo and witness and accused have put their respective signatures on the seizure memo. Both the seizure memos were attested by Mr. Baljinder Singh, Sub Divisional Agriculture Officer, Ambala Accused Amlesh Sahni and Ashok Sahni have committed the crime of Section 18-61-1985 NDPS ACT by keeping 3 kg 10 grams of opium in their possession without license/permit.”

2.1. Petitioner was arrested on 08.12.2022 and has been in custody ever since.

3. Learned counsel for petitioner submits that petitioner has been falsely implicated in this case. He further submits that allegations against the petitioner are false and there is not even an iota of truth in the same. Further argues that alleged narcotic substance was not recovered from the petitioner and mere fact that petitioner was found possessing Rs.80,000/- is not sufficient to connect petitioner with the commission of crime.

3.1 Learned counsel further submits that petitioner is a vegetable vendor and carries out his business within four corners of law. He has been implicated merely because the co-accused, a distant relative of his, was allegedly carrying the psychotropic substance with him at the time he was apprehended. Further submits that he is a family person having fixed abode comprising wife and two school going minor children, who are living in penury in his absence as there is no other earning member in the family. He further states that petitioner had no knowledge, if at all, of the said distant relative carrying out any such activity, as has been attributed to him by the prosecution.

3.2 He further submits that nothing is to be recovered from the petitioner and he is not required for further custodial interrogation. There is no likelihood of petitioner tampering with evidence and/or influencing prosecution witnesses. He further submits that even antecedents of the petitioner are clean and he is not involved in any other FIR.

4. On the other hand, learned State counsel, opposes the bail petition. He submits that petitioner has committed a serious offence. In case, petitioner is granted

concession of bail, there are chances of his fleeing from justice. On a Court query, under instructions from SI Jarnail Singh, he submits that challan was presented on 20.05.2023, charges are yet to be framed. There are 15 prosecution witnesses out of them, none has been examined till date. He further submits that recovery of contraband falls within the ambit of commercial quantity.

5. I have heard rival contentions of learned counsels for the parties and have gone through the case file.

6. Challan has been presented in the present case and charges are yet to be framed. Investigation is thus complete *qua* petitioner, he is not required for custodial interrogation. Commencement/conclusion of the trial is likely to take quite sometime. Allegations against petitioner are a matter of trial at this stage.

7. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Whereas petitioner has already been languishing in jail for more than 07 months in preventive custody, he being behind bars since 08.12.2022. He is being kept in preventive custody merely on an unfounded suspicion that if he is let out, he may either tamper with evidence and/ or influence witnesses. There is no documentary evidence and it is more in the nature of FSL report *qua* contraband, already filed in the Court below to which accused has no access. There is no probability of tampering with evidence as the same has already been seized by the investigating agency. As regards witnesses, they are all official and therefore, they are unlikely to be influenced, even if there is any such apprehension by the prosecution.

8. At this stage, there appears to be a reasonable ground that petitioner may not be guilty of the alleged offence. He is unlikely to commit any offence while on bail.

9. Petitioner is stated to be 30-year old and having two school going minor children and wife to look after. Being a family person with clean antecedents and no other case pending against him, it is unlikely that he is flight risk or will flee from the trial proceedings. Offence allegedly committed by petitioner is of non-violent nature and in that sense his release on bail is not a threat to the society at large by committing any violent crime.

10. Considering the overall scenario and without commenting on the merits of the case, the instant petition is allowed. I am of the view that no useful purpose would be served to keep the petitioner in further preventive custody.

11. Accordingly, petitioner is ordered to be released on bail on his furnishing bail bonds and surety bonds to the satisfaction of Ld. trial Court, where his case is being tried and in case he/she is not available, before learned Duty Judge, as the case may be.

12. In case, petitioner is found to be involved or gets involved in any offence while on bail, the prosecution shall be at liberty to seek cancellation of his bail in the instant case.

13. It is made clear that any observations and/or submissions noted hereinabove shall not have any effect on merits of the case as the same are for the limited purpose of hearing the instant bail petition alone and learned trial Court shall proceed without being influenced with this order.

14. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

31.07.2023

vandana

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No