HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M-14720-2021
Date of Decision: 17.02.2023

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Inderjeet Singh ... Petitioner

VS.

State of Punjab ... Respondent

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CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

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Present: Ms. Kanika Ahuja, Advocate for the petitioner

Mr. Rajiv Verma, DAG Punjab

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Sandeep Moudgil, J.

(1) By way of this second bail petition, the petitioner is seeking regular bail in case FIR No. 01 dated 12.06.2017 registered under Section 59(2)(b), 21 and 22 of the NDPS Act; Sections 218, 466, 471, 120-B, 384, 409 and 482 IPC and Section 25 of the Arms Act at Police Station Special Task Force, Phase IV, Mohali, District SAS Nagar (Mohali).

(2) Learned counsel for the petitioner *inter alia*, submits that the petitioner has been falsely implicated in the present case. He was working in the Punjab Police as Inspector and also got commendation and appreciation certificates from Punjab Police. He was even awarded Gallantry Award by the President of India for his meritorious services during the terrorism period in Punjab. Thereafter, the petitioner had also apprehended/arrested number of drug smugglers/peddlers in the State of Punjab and effected highest number of recoveries of drugs in the State of Punjab. Besides, he also arrested world famous synthetic drug lord namely, Raja Kandola and effected recovery of "ICE" worth Rs.200 Crores from him. The Enforcement

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Directorate has also seized the properties worth hundreds of crores of rupees of Raja Kandola. Further, on the efforts of petitioner, the case of drug lord Jagdish Bhola came into light and during investigation of the same, drug scam of Rs.6000 crore was exposed. Ultimately, Jagdish Bhola and his accomplices were convicted by the trial court. The petitioner has also exposed the nexus between the drug smugglers and employees/officials of Chemical Laboratory, Kharar; he arrested/apprehended the main drug smugglers/peddlers in the State of Punjab, who are very powerful and influential persons and registered hundred of cases under NDPS Act and effected huge recoveries of Narcotic Drugs. In most of the case the accused persons were convicted.

(3) Learned counsel submitted that the petitioner has been implicated and arrested in the present false FIR No.01 dated 12.06.2017 just to ruin his career and the alleged recovery has been conspired against the petitioner. In the above FIR, the petitioner was complainant/informant and had partly investigated three other FIRs wherein the accused persons were acquitted by the same Presiding Officer. It is urged that the State did not prefer to file any criminal appeal against the acquittal of the above-said accused persons and it was the petitioner, who being the informant/complainant, challenged the acquittal of the above persons before this Court. The said criminal appeals (Annexure P6 colly) have been admitted by this Court. It is also highlighted that out of 100 FIRs/cases under NDPS Act, investigated by the petitioner, accused persons in 35 FIRs/cases have been convicted.

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(4) Learned counsel also submitted that despite court orders, the STF, Mohali/investigating officer in the present FIR No.01 dated 12.06.21017, has tampered/fabricated/destroyed the zimnies and CCTV footage which were ordered to be preserved vide order dated 22.06.2017 by CJM, Mohali. The said CCTV footage would falsify the story of the investigating agency/STF as the petitioner was never inside the police quarter at Phagwara from where the alleged recovery of alleged heroine and smack was shown to have been effected. Earlier the trial Court vide order dated 05.09.2019 had dismissed the application dated 03.08.2017 of the petitioner for extracting second samples from the alleged seized articles and for sending the second samples to the Central Forensic Science Laboratory. The petitioner challenged the said order before this Court in CRM-M-52461-2019 wherein notice of motion has been issued vide order dated 09.12.2019 (Annexure P7).

(5) It is contended that since co-accused Ajaib Singh has already been granted the concession of regular bail by the trial court vide order dated 17.10.2017 (Annexure P12) and this Court granted regular bail to co-accused Sahib Singh vide order dated 10.07.2020 passed in CRM-M-17490-2020 (Annexure P13), this petitioner deserves to be granted the concession of regular bail by this Court. The petitioner earlier also approached this Court in CRM-M-19751-2020 seeking regular bail but the same has been dismissed by this Court vide order dated 07.08.2020 (Annexure P15).

(6) Notice of motion was issued in this case on 08.04.2021 and the case was ordered to be listed along with connected petition i.e. CRM-M-9021-2021.

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(7) On 27.01.2022, learned senior counsel for the petitioner submitted that in FIR No.172 dated 11.12.2018, the proceedings qua the petitioner were stayed by this Court vide order dated 20.03.2020 and FIR No.01 dated 12.02.2015 was cancelled by DGP, Punjab and the matter was adjourned to 18.02.2022 to enable the State counsel to ascertain the said fact.

(8) A status report was filed on 14.02.2022 by the DSP, Special Task Force, Jalandhar Range, Jalandhar stating that during the investigation of the FIR No.01 dated 12.02.2015, the accused Jagdip Singh made a disclosure statement during interrogation that he paid Rs.10 lakhs to the petitioner through Pawan Kumar and Raminderpal Singh @ Prince. It was informed that the investigation in the said FIR is complete, however, a separate petition for getting permission in compliance to the orders passed by this Court in CRWP No.20359 of 2013 and CWP No.23426 of 2014, has been filed and after getting necessary permission, challan will be presented in the Court.

(9) The matter was thereafter adjourned on numerous occasions and thereafter on 03.02.2023, the learned State counsel was directed to file specific affidavit on the assertions made with regard to the documents i.e. FIR (Annexure P3), judgment dated 15.03.2018 (Annexure P4), complaint and CCTV footage.

(10) Today, an affidavit dated 15.02.2023 has been filed by Raj Kumar, PPS, DSP, STF, Jalandhar Range, Jalandhar has been filed in court, which is taken on record. The said affidavit is an eye-opener inasmuch as it is averred that the petitioner got registered various FIRs under the NDPS Act and thereafter he made friendly relations with the accused in the FIRs and

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got huge money from them on the promise of getting them acquitted. Even the report sought from IGP, Border Zone, Amritsar and SSP, Tarn Taran, regarding acquittal of accused persons due faulty investigation conducted by the petitioner, points out that the petitioner has intentionally made overwriting in the documents, changed the registration numbers of the vehicles during investigation of (i) FIR No.155 dated 01.10.2013; (ii) FIR No.85 dated 04.07.2013; and (iii) FIR No.100 dated 14.08.2013. It is further averred in the affidavit that the petitioner is having nexus with the drug smugglers at large level and as such he played vital role in conducting deficient investigation.

(11) It is also maintained that during the course of investigation in FIR No.01 dated 12.06.2017, recovery of 4 kg heroin and 3 kg smack has been made by the police from the quarter No.3 of the petitioner besides recovery of arms and ammunition which shows his active involvement of the petitioner with the smugglers even during his service career.

(12) A perusal of the affidavit also shows that in pursuance of the order dated 12.06.2017 passed by CJM, SAS Nagar, the DVR & Hard disc recording for the period from 11.06.2017 to 15.06.2017 has been taken in possession of STF team during search of house of the petitioner at Kishangarh Colony, Amritsar which were sent to CFSL, Sector 36, Chandigarh.

(13) Learned State counsel has filed custody certificate dated 16.02.2023 in terms whereof, the actual undergone period by the petitioner is 5 years 7 months 26 days. He submits that there are two more FIRs i.e. FIR No.1 dated 12.02.2015 under Sections 7-8-13(2)-88 of the PC Act,

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registered at Police Station VB, Mohali and FIR No.172 dated 11.12.2018 under Sections 409 IPC, registered at Police Station Sadar Phagwara and in both cases, the petitioner is on bail.

(14) Having heard learned counsel for the parties and examining the facts and circumstances at this juncture, there is no material evidence to establish innocence of the petitioner-accused as such, the question of admitting him to regular bail does not right at all.

(15) Section 37 of the NDPS Act, envisaged to twin conditions: The court's satisfaction that there were reasonable grounds for believing that the accused was not guilty; and he was not likely to commit any offence while on bail. The statute used "three expressions" — "the court is satisfied"; "reasonable grounds", and "believing that the accused is not guilty", and as such, it does not restrain the Court from exercising its jurisdiction. The requirement of recording reasons would not mean to record in writing establishing that an accused is innocent'. Hence it is the subjective satisfaction of the court based on an objective assessment of the material brought before it for giving a reasonable ground to sustain a belief.

(16) A thorough discussion and the above referred case law crystallize the meaning of "reasonable grounds" used in Section 37(1)(b) of the NDPS Act as credible, plausible grounds for the Court to believe that the accused person is not guilty of the alleged offence. However, bail under the said section cannot be granted merely on the ground that nothing was found from the possession of the accused.

(17) As strongly asserted by the learned State counsel there is sufficient and cogent evidence which is sufficient for this court to draw an

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inference that there are reasonable grounds to believe the petitioner's active and regular involvement is drug peddling.

(18) This Court is of the considered view that drug menace in the State of Punjab is writ large and large number of youth are falling prey at the hands of such mafia. The role of the petitioner is not that of law abiding citizen as is evident from the record before this Court. With deep concern it is of utmost importance at this stage to say that clandestine smuggling of narcotics drugs and psychotropic substance has led to drug addiction among a sizeable section of the public, particularly the adolescence and students of both sexes and the menace has assumed serious and alarming proportions in recent times. It has to be borne in mind that in a murder case the accused commits murder of one or two persons, while those persons who are dealing in a narcotic drugs are instrumental in causing death or inflicting death blow to a number of innocent young victims, who are vulnerable; it causes deleterious effects and a deadly impact on the society; they are a hazard to the society; even if they are released temporarily, in all probability, they would continue their nefarious activities of trafficking and/or dealing in intoxicants clandestinely obviously for large stake and easy illegal profit making mode. In the present prevailing scenario, the drug trafficking, trading and its use has acquired dimensions of an epidemic which not only effects the economic policies of the State but corrupts the system apart from leaving the impact of producing sick society. I will not be shy of saying that anti drug justice is a criminal dimension of social justice as drug addiction forms vitals of the society alongwith illicit money generation by drug trafficking.

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(19) This Court is of the view that the argument of learned counsel that he is in judicial custody since 12.06.2017 can also be of no help to him. A reference in this context would be relevant to make in case of ***Sheru vs. Narcotics Control Bureau appeal Nos. 588-586-2020 arising out of SLP (Crm Nos. 2249-2250/2020),*** wherein though the accused had been in judicial custody for almost 8 years, the Court expressed that mere passage of time cannot be a ground of bail under NDPS Act.

(20) In fact, the jurisdiction of the Court to grant bail is circumscribed by the provision of Section 37 of NDPS Act specifically observing that bail can be granted only if reasonable grounds are there to believe the innocence of the accused added with the fact that he is not likely to commit any offence while on bail. The mandate as envisaged under section 37 of the NDPS Act needs to be followed 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 3 [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.*

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> *(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) or any other law for the time being in force on granting of bail.]*

(21) Going a step further it is negative burden casted on the petitioner to disapprove the case of prosecution as per the mandate of Section 37 of the NDPS Act which discloses that the offences are cognizable and non-bailable.

(22) Other than the aforesaid discussion, it is Section 35 of NDPS Act which raises a presumption of culpable mental state of mind for which no explanation is forthcoming from the petitioner in this regard. Section 35 of NDPS Act reads as under:-

> *"35. Presumption of culpable mental state.—(1) In any prosecution for an offence under this Act which requires a culpable mental state of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.*
>
> *Explanation.—In this section "culpable mental state" includes intention motive, knowledge of a fact and belief in, or reason to believe, a fact.*
>
> *(2) For the purpose of this section , a fact is said to be proved only when the court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of probability."*

(23) The fact remains that the petitioner is working as Inspector and being a member of the disciplined force, it is his duty to prevent the

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commission of offence and he is also responsible to see that the culprits do not escape from the clutches of the law by registering cases and investigating into the matters. It is the utmost duty and the responsibility of the custodians of law to abide by law themselves and give no scope for any lapse in the performance of their duties. But, unfortunately, in the instant case, it is alleged that instead of registering a case against the real culprits and that too for a serious offences under the NDPS Act, the petitioner himself has been allegedly found involved in wrongly acquitting the accused persons by conducting faulty investigation and is having nexus with drug peddlers also. Such serious allegation cannot be lightly brushed aside and the same should be dealt with an iron hand, firmly and sternly with no sympathy.

(24) Taking into consideration the totality of the facts and circumstances of the cases coupled with the fact that huge quantity of drugs i.e. 4 kgs of heroin and 3 kgs of smack has been recovered from the quarter of the petitioner besides recovery of illegal arms and ammunition from him, who being a police officer misused his position and developed relations with the smugglers and taking advantage as such of his rank, was in fact acting as conduit of smugglers, this Court is of the view that the petitioner does not deserve any leniency. Moreover, the trial is moving at its pace where evidence of the prosecution witnesses is going on and in such circumstances, realization of the petitioner would mar the prosecution trial as there are every chances of the petitioner, being an ex-police officer, exercising undue influence over the witnesses.

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(25) For the reasons afore-stated, no ground worth meritorious has been made out which would persuade this Court to grant the concession of regular bail to the petitioner.

(26) Dismissed.

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(Sandeep Moudgil)
Judge

1. Whether speaking/reasoned? Yes/No
2. Whether reportable? Yes/No

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