

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

CRM-M-16019 of 2023 (O&M)

Date of decision : 20.07.2023

Baljit Singh

..... Petitioner

versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. Piyush Sharma, Advocate for the petitioner.

Mr. Amit Shukla, Asst. A.G., Punjab.

PANKAJ JAIN, J. (ORAL)

1 This second petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case F.I.R. No.74 dated 11.05.2022 registered under Sections 22/29 of Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Mallanwala, District Ferozepur.

2 As per the allegations in the FIR, it has been alleged as under :-

“Station House Officer Police Station Mallanwala Sat Sri Akal today I ASI along with ASI Jagtar Singh No. 471/FZR, HC Jagdev Singh No. 544/, PHG Gurpreet Singh 6233 was on government vehicle bearing number PB.05.R.9829 which was being driven by PHG Gurpreet Singh 6233 regarding patrolling and checking of suspicious persons and left for the village Narang Singh Wala, Alipur etc., when Police party while patrolling was coming from the area of chowkiThatta Kishan Singh towards Police station Mallanwala, when the Police party arrived ahead to village Chahal near Dharampura near devastated building of Gaushallathe Police siren was on, then from the right side of the road two hair cut youngsters with xxxx xxx were seen standing in the car's

lights and one out of them carrying polythene colour white in his right hand, dropped it there and both of them started going inside the Gaushalla building then I ASI immediately got the vehicle stopped and with the help of other Policemen apprehended them, then the youngster who dropped the polythene disclosed his name Tarsem @ Soma son of Joginder son of Akbar resident of Basti Chahal Ward No. 12 Mallanwala and the second one disclosed his name Baljeet Singh son of Sham Lal son of Sadhu Ram resident of Dharampura Ward No. 13 Mallanwala. Tarsem Soma disclosed that there are intoxicant tablets inside the polythene dropped by him and both of them brought together, then both of them were brought near to the dropped polythene colour white out of which some intoxicant tablets were lying scattered on the ground, then an attempt was made to join a witness from public but no one was available thereafter Tarsem @ Soma put the scattered tablets on the ground inside the polythene colour white and produced before me in the torch light from which loose intoxicant tablets colour orange were recovered. On counting them total 500 loose intoxicant tablets were found. These loose intoxicant tablets along with polythene put in a plastic container and converted into a parcel which was sealed by me ASI bearing seal impression L.S., specimen seal was prepared separately. The seal was handed over to ASI Jagtar Singh 471/FZR after using the same. The sealed parcel was taken into Police custody vide separate recovery memo. The memo was witnessed by the witnesses. The above said accused Tarsem @ Soma and Baljeet Singh have committed offence under section 22/29/61/85 NDPS Act by keeping loose intoxicant tablets in their possession. Therefore a ruqa in writing is being sent to Police station through PHG Gurpreet Singh 6233 for registration of FIR against them. Case number be provided after registration of the same. PCR be informed. Special reports be issued. I along with other Policemen is proceeding with the investigation at the spot. Today within the area of Dharampura at 10:00 PM. SD/-Lakhwinder Singh ASI I/C PP ThattaKishan Singh PS Mallanwala dated 11/05/2022. Today at Police station:-on receiving the above mentioned ruqa at Police station the above said FIR for the above said offence has been registered against the above said Tarsem Singh@Soma and Baljeet Singh and copy of FIR along with ruqa in original is being sent through PHG to ASI at the spot. After preparing the special reports the same is being sent through SC Darshan Singh 554/FZR to present the same before the Illaqa Magistrate and senior officers. PCR is being informed through W/M. DDR No. 42

dated 11/05/2022 time 10:40 PM.”

3 Custody certificate by way of affidavit of Gurnam Lal, Superintendent of Central Jail, Ferozepur on behalf of State has been filed. The same is taken on record.

4 Learned counsel for the petitioner submits that the specific case of the prosecution is that it was Tarsem @ Soma who was carrying the polythene containing tablets. It was he who dropped it and it was Tarsem @ Soma only who disclosed that the polythene contained intoxicant tablets. There was no allegation against the petitioner apart from the fact that he was standing with Tarsem @ Soma. The petitioner has no criminal antecedents of being involved in any other case under NDPS Act. Further reliance has been placed upon ***Amarsingh Ramjibhai Barot Vs. State of Gujarat (2005) 7 SCC 550*** to submit that contraband being carried by one person cannot be attributed to the other to attract Section 29 of the NDPS Act. In ***Amarsingh Ramjibhai Barot 's case supra*** the Supreme Court held as under :-

“4. The appellant and deceased Danabhai Virabhai Rabari were charged with offences punishable under Sections [15](#), [17](#) and [18](#) read with Section [29](#) of the Narcotic Drugs and Psychotropic Substances Act and put up for trial. The trial Court held that the prosecution had proved that both the accused were guilty of individually and jointly possessing 920 grams of opium and 4.250 kgs. of opium without any pass or permit and, were, therefore, liable to be convicted for offences punishable under Sections [17](#) and [18](#) read with Section [29](#) of the Narcotic Drugs and Psychotropic Substances Act. Each of the accused, i.e. the appellant and the deceased Danabhai, was awarded with punishment of 5 years rigorous imprisonment together with a fine of Rs. 35000 with a default sentence. With regard to jointly possessing 4.250 kgs. opium without any pass or permit, both the accused i.e. the appellant and Danabhai Virabhai Rabari were awarded with punishment of rigorous imprisonment for 10 years

with a fine of Rs. 1,00,000/- each, together with a default sentence. Both the punishments were directed to run concurrently.

5. The appellant and the said Danabhai Virabhai Rabari filed separate appeals challenging their convictions. CRA No. 431/02 was filed by Amarsingh Ramjibhai Barot, and CRA No. 53/02 by Danabhai Virabhai Rabari. During the pendency of his appeal, Danabhai Virabhai Rabari expired on 22.3.2004, therefore, his appeal CRA No. 53/02 was disposed of as having abated by an order made on 28.4.2004.

6. A number of contentions were urged in the High Court by the appellant in support of his appeal. It was contended that the conviction was liable to be set aside as there was non-compliance with the provisions of Sections [42\(2\)](#), [50](#), [52](#) and [57](#) of the Narcotic Drugs and Psychotropic Substances Act. There is no substance in this contention. The High Court, however, was of the view that the conviction of the appellant under Sections [17](#) and [18](#) read with Section [29](#) of the Narcotic Drugs and Psychotropic Substances Act was not correct. On the other hand, the High Court came to the conclusion that the appellant was liable to be convicted under Section [21\(c\)](#) and also under Section [21\(c\)](#) read with Section [29](#) of the Act, for individually being in possession of 920 grams and for being jointly, in conspiracy with the deceased, in possession of 4.250 kgs. of the prohibited substance recovered. In the view of the High Court, the total amount of prohibited substance recovered (personally from the appellant and also from the joint possession of the two accused) being more than "commercial quantity" as defined under the applicable notification, the appellant was liable to be visited with the minimum punishment of 10 years rigorous imprisonment plus fine of Rs. 1 lakh. The High Court was also of the view that, even if the quantity of 920 grams recovered from the appellant alone were to be considered, it would warrant conviction under Section [21\(c\)](#) and the minimum sentence of 10 years rigorous imprisonment plus fine of Rs. 1 lakh. Being aggrieved thereby, the appellant is before this Court.

7. The learned counsel appearing for the appellant urged only one contention in support of the present appeal. He contended that the High Court fell into an error in taking the total quantity of the offending substances recovered from the two accused jointly and holding that the said quantity was more than the commercial quantity, warranting punishment under Section [21\(c\)](#) of the Narcotic Drugs and Psychotropic Substances Act. He contended that as far as the appellant is concerned, the High Court erred by assuming that there was criminal conspiracy within the meaning of Section [29](#) of the Narcotic Drugs and Psychotropic

Substances Act, and erroneously proceeded under the said section. The High Court fell into a further error of assuming that because Section [29](#) was applicable, the total quantity of opium recovered was 920 grams plus 4.250 kgs. The counsel urged that because of this error the High Court took the wrong view that the total recovered opium was of "commercial quantity" and, therefore, attracted Section [21\(c\)](#) of the Narcotic Drugs and Psychotropic Substances Act.

8. Although, at first blush, the argument of the learned counsel appeared attractive, on careful appreciation of the facts on record we are satisfied that the High Court judgment is fully justified and needs to be upheld. It is true that the High Court proceeded on the footing that there was a criminal conspiracy between the appellant and the deceased, Danabhai Virabhai Rabari. In our view, however, there was no warrant for this conclusion at all as there is no evidence to suggest that there was any such abetment and/or criminal conspiracy within the meaning of Section [29](#) of the Narcotic Drugs and Psychotropic Substances Act. The appellant and Danabhai Virabhai Rabari were found together, but individually carrying the recovered substances. Hence, it was not possible for the High Court to take the view that Section [29](#) was attracted.

9. The High Court was justified in its conclusion that the appellant could not have been punished under Sections [17](#) and [18](#) of the Narcotic Drugs and Psychotropic Substances Act.

10. The High Court has not merely rested its conclusion on Section [29](#) and the fact of adding together the recoveries made from the appellant and the other accused, deceased Danabhai Virabhai Rabari, for the purposes of arriving at a quantity of recovery of opium more than the 'commercial quantity'. The High Court has carefully analysed the facts before it and arrived at the right conclusions as well shall see presently.”

5 Learned State counsel is not in a position to dispute the
aforementioned factual assertions based on record.

6 I have heard learned counsel for the parties and have gone
through the records of the case.

7 In the light of the aforesaid law laid down by the Apex Court
and keeping in view the incarceration suffered by the petitioner and
without commenting on the merits of the case, the present petition is

allowed. The petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the Ld. Trial Court/Duty Magistrate, concerned. However, in addition to conditions that may be imposed by the Trial Court/Duty Magistrate concerned, the petitioner shall remain bound by the following conditions :-

- (i) The petitioner shall not mis-use the liberty granted.*
- (ii) The petitioner shall not tamper with any evidence oral or documentary during the trial.*
- (iii) The petitioner shall not absent himself on any date before the trial.*
- (iv) The petitioner shall not commit any offence similar to the one alleged in the present case.*
- (v) The petitioner shall deposit his passport, if any with the trial Court.*
- (vi) The petitioner shall give his cellphone number to the police authorities and shall not change his cell-phone number without permission of the trial Court.*
- (vii) The petitioner shall not in any manner try to delay the trial.*

8 Needless to say anything recorded herein shall not be construed as an expression of opinion on the merits of the case.

(PANKAJ JAIN)
JUDGE

20.07.2023
Pooja sharma-I

Whether speaking/reasoned	Yes
Whether Reportable :	No