

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

CRM-M-19996-2023

Date of decision : 10.08.2023

LIYAKAT ALI @ LIYAKTU @ LIAQAT ALI

....Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. S.K. Choudhary, Advocate
for the petitioner.

Mr. Amit Shukla, AAG, Punjab.

PANKAJ JAIN, J. (ORAL)

This petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case F.I.R. No.5 dated 7th of January, 2023 registered for the offence punishable under Section 15 of Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Sujampur, District Pathankot.

2. As per case of the prosecution it has been claimed as under :

“3. Brief facts of the case are that on 07.01.2023 SHO/ Inspector Anil Pawar along with ASI Yash Pal, ASI Balwinder Singh, Constable Sikandar Singh, constable Munish Kumar was present at T-Point Defence Road, Main Highway on a government vehicle being driven by CT Gurwinder Singh in connection with search of bad elements. Then on seeing the Naka of the police, the driver of one truck stopped his truck and gave a secret information to Inspector Anil Pawar that one truck bearing no.PB-06-M-2669 was driven by one Salwinder singh son of Shamsher Singh, resident of Village Boot, PS Kotwali, District Kapurthala and

Bohar Singh son of Baldev Singh resident of Dolowal, PS Kot Essekhana was also sitting in the said Truck. They used to bring the heavy quantity of poppy husk from Srinanagar and supply the same in Punjab State. In the said illegal business, Liyakat Ali@ Liyakte son of Shareef Mohammad, resident of Village Kot Pannu, PS Rajbagh, District Kathua is also involved with them. Now, Salwinder Singh along with Bohar Singh were coming in the said Truck from the side of Jammu towards Punjab via Lakhanpur, Madhopur through the Main G.T. Road. If Nakabandi be arranged strictly, they can be apprehended. Inspector Anil Pawar further supplied the said information to Sh. Dilbagh Singh, PPS, DSP/Anti Narcotic, Pathankot through Wireless and requested him to reach at the spot. Thereafter, a Naka was laid and the police party started checking the vehicles coming from the Jammu side. After sometime, Sh. Dilbagh Singh, PPS DSP/Anit Narcotic also came at the spot. In the meantime, a public witness was tried to join by the police party but none became ready to join the police party. After sometime during checking one Truck bearing no.PB-06-M-2669 was coming towards the Naka point. Inspector Anil Pawar along with other police officials stopped the said Truck by giving a signal. The driver and second person sitting in the Truck were asked about their identity. The driver of the Truck disclosed his name as Salwinder Singh son of Shamsher Singh, resident of Village Boot, PS Kotwali, District Kapurthala and the second person disclosed his name as Bohar Singh son of Baldev Singh resident of Dolowal, PS Kot Essekhana. Thereafter, DSP told them about his rank and identity that he is a gazetted officer and he has the suspicion of having some intoxicant material with them, as such their search as well as search of their Truck is required to be conducted. The DSP also told them that they have legal right to get their search as well as the search of their Truck from him or from some Magistrate. The accused reposed confidence in DSP and said that he can conduct their search as well as the search of their Truck. On this, separate consent memos were prepared. Then as per the direction of DSP and in the presence of the police officials, Inspector Anil Pawar conducted the search of the Truck. From the body of the Truck

under the tarpaulin 16 plastic bags, which were hidden in the truck, were recovered. On opening all the plastic bags, the poppy husk was recovered. After arranging computerized weighing machine, the weight of first plastic packet which was marked as Mark-'A1' was 20 kilograms poppy husk, the weight of second plastic packet which was marked as Mark-'A2' was 20 kilograms poppy husk, the the weight of third plastic packet which was marked as Mark-'A3' was 20 kilograms poppy husk, the weight of fourth plastic packet which was marked as Mark-'A4' was 20 kilograms poppy husk, the weight of fifth plastic packet which was marked as Mark-'A5' was 20 kilograms poppy husk, the weight of sixth plastic packet which was marked as Mark-'A6' was 20 kilograms poppy husk, the weight of seventh plastic packet which was marked as Mark-'A7' was 20 kilograms poppy husk, the weight of eighth plastic packet which was marked as Mark-'A8' was 20 kilograms poppy husk, the weight of ninth plastic packet which was marked as Mark-'A9' was 20 kilograms poppy husk, the weight of tenth plastic packet which was marked as Mark-'A10' was 20 kilograms poppy husk, the weight of eleventh plastic packet which was marked as Mark-'A11' was 20 kilograms poppy husk, the weight of twelveth plastic packet which was marked as Mark-'A12' was 20 kilograms poppy husk, the weight of thirteenth plastic packet which was marked as Mark-'A13' was 20 kilograms poppy husk, the weight of fourteenth plastic packet which was marked as Mark-'A14' was 20 kilograms poppy husk, the weight of fifteenth plastic packet which was marked as Mark-A15 was 20 kilograms poppy husk, the weight of sixteenth plastic packet which was marked as Mark-A16 was 16 kilograms poppy husk. In all 300 Kilo 16 grams poppy husk was recovered. Inspector Anil Pawar sealed all the parcels with his seal impression 'AP/1/1'. DSP also sealed the parcel with his seal impression 'DS1/1'. Form M-29 was prepared at the spot. Sample seal was prepared. After use, Inspector Anil Pawar handed over his seal to ASI Yashpal, whereas DSP kept his seal with him. The case property was taken into police possession vide separate recovery memo. The Truck was also taken into police possession vide separate recovery memo. Ruqa was sent to Police Station through CT Sikander Singh on the basis of which FIR was registered.”

3. Counsel for the petitioner submits that apart from having been nominated on the basis of disclosure made by Salwider Singh and the name of the petitioner figuring in the alleged secret information there is nothing on record. He further refers to the fact that the petitioner admittedly was in custody since 5th of January, 2023 from 3.00 PM for being in possession of 22 grams of *heroin*. His involvement on the basis of disclosure in which the co-accused claimed that the Liaqat Ali accompanied them from Srinagar upto Jammu and left their company only in the morning hours on 6th of January, 2023 itself gets falsified. He further submits that the petitioner is in custody for more than 6 months and 14 days and has been nominated merely on the basis of disclosure made by the co-accused which cannot be relied upon by the prosecution in view of law laid down by the Apex Court in **Tofan Singh vs. State of Tamil Nadu, (2021) 4 SCC 1**.

4. State Counsel does not dispute the afore-stated factual assertions based on record.

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

6. Without commenting on the merits of the case, keeping in view the incarceration already suffered by the petitioner and in view of law laid down by the Apex Court in the case of **Tofan Singh's** case (*supra*), the present petition is allowed. The petitioner is ordered to be released on bail on his furnishing bail bonds/surety bonds to the satisfaction of the 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.

7. In case of breach of any of the aforesaid conditions and those which may be imposed by the Trial Court, the prosecution shall be at liberty to move cancellation of bail of the petitioner.

8. Needless to say that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

August 10, 2023		(Pankaj Jain)
Dpr		Judge
Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No