

2023:PHHC:105104

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

SR. No.217

CRM-M-19812-2023 (O&M)

Date of decision:16.08.2023

Sukhminder Singh @ Neela

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE N.S. SHEKHAWAT

Present: Mr.P.S. Sekhon, Advocate
For the petitioner.

Mr. M.S. Bajwa, DAG, Punjab.

N.S. SHEKHAWAT, J.

1. Petitioner prays for grant of bail pending trial in FIR No.239 dated 17.12.2022 registered under Section 15 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') at Police Station Model Town, Ludhiana.

2. As per the FIR (Annexure P-1), a police party headed by ASI Harmesh Singh was present at Atam Nagar, Ludhiana in connection with checking of suspicious persons, and in the meantime, a truck bearing registration No.PB-13-BB-6777 was seen coming from the side of the bridge. On seeing the police party, the truck driver got perplexed and stopped the truck before the barricades and tried to escape from there. However, he was apprehended by the police and he disclosed his name and address as Sukhminder Singh @ Neela son of Gurmail Singh, resident of village Ramgarh Jawandhe PS Chhajli, District Sangrur. The complainant

asked him about the reason for running away from the spot, but he failed to give a satisfactory reply. On this, the police officials expressed their suspicion with regard to presence of narcotic substance in the truck. On searching the truck, five plastic bags were recovered and after arranging the scale, the bags weighed to be 20 kg 100 grams each and poppy husk was found in the same. After following the process, the five bags containing 20 kg 100 grams of poppy husk each were taken into possession by the police at about 5.45 p.m. on 17.12.2022.

3. Learned counsel for the petitioner contends that as per the version of the police, at about 5.45 p.m. on 17.12.2022, the truck was found loaded with five bags of poppy husk weighing 20 kg and 100 grams each and the FIR was registered for keeping 100 kg and 500 grams of poppy husk without any permit or licence. However, learned counsel submits that he has been falsely involved in the present case due to political rivalry. Learned counsel submits that the petitioner was Ex-Sarpanch of village Ramgarh, Jawandhe, District Sangrur and was being pressurised by the leaders of ruling party to join their party, during the by-election of Sangrur Parliamentary Segment. However, the petitioner refused to join the ruling party and due to this, the candidate of ruling party was defeated in the parliament elections and the present case has been planted on him with a view to teach a lesson to the petitioner. Learned counsel further submits that at about 6.50 p.m. on 16.12.2022, the truck of the petitioner was in the area of Bhakra River, Narwana Road, Village Govindpura and the truck was stopped at 6.59 p.m. and remained at the same place up-to 7.44 p.m. At about 7.44 p.m. on 16.12.2022, the truck was again started and the same was stopped at about 10.45 p.m. in the area of link road, Vishwakarma to Atma

Nagar, Model Town, Ludhiana, where Atam Park, Police Post is situated and ASI Harmesh Kumar is posted as In charge in the said police station. As per learned counsel, the truck remained parked in the same place from 10.45 p.m. on 16.12.2022 to 12.27 p.m. on 18.12.2022 and again the truck was started at about 12.27 p.m. on 18.12.2022 and again stopped at 12.44 p.m. and the truck remained parked there only. After this, the truck remained parked there only till 11.59 p.m. on 20.12.2022 and later on, the batteries were removed from the truck. Learned counsel also referred to the GPS location of the truck in question as Annexure P-3. Learned counsel further submits that when the truck remained parked at one place from 10.45 p.m. on 16.12.2022 to 12.27 p.m. on 18.12.2022, it was impossible for the police to find the truck for the first time at about 5.45 p.m. on 17.12.2022. Learned counsel further contends that the petitioner was forcibly picked by ASI Harmesh Singh, In charge, Police Post, Atam Park, Ludhiana and his son was also with him and was driving the car. He also referred to the photograph Annexure P-4 in this regard and submitted that he was picked by the police at about 6.50 p.m. on 16.12.2022 and the police party was in three vehicles and one car bearing No.PB-10-HA-1912 was driven by son of ASI Harmesh Singh and his son was not given employment in this department. Even the truck was apparently following the said car and the photographs taken from toll plaza on 16.12.2022 have been annexed as Annexure P-4. Learned counsel further submits that the family members of the petitioner submitted detailed representations to the higher police officers, but no action was taken and ultimately, the challan was presented within a period of two months in an exceptional hurry. Even the petitioner moved an application before the learned trial Court for preserving the footage of CCTV cameras

installed at the toll plaza, which would clearly establish that the petitioner was illegally picked by the Punjab Police. Thus, it is evident that the petitioner has been falsely involved in the present case.

4. On the other hand, learned State counsel submits that there are serious allegations against the present petitioner of carrying more than 100 kgs of poppy husk, which is commercial in nature and the petitioner does not deserve the concession of bail. He however, admits that the present petitioner has already undergone more than 7 months of custody and there is no other criminal case against him except a complaint under Section 138 of the Negotiable Instruments Act.

5. I have heard learned counsel for the parties and perused the record with their able assistance.

6. As per the case of the prosecution, the police had set up a naka and at about 5.45 p.m. on 17.12.2022, the recovery had allegedly taken place from the truck, which was being driven by the present petitioner. However, the petitioner has annexed the GPS location of the said truck and as per that, the truck of the petitioner remained parked between 10.45 p.m. on 16.12.2022 to 12.27 p.m. on 18.12.2022 in Police Post, Atam Park, Ludhiana. Thus, on 17.12.2022, the truck was not on the road and the recovery of the contraband from the truck on 17.12.2022 seems to be doubtful. Apart from that, the learned counsel for the petitioner has also relied upon the CCTV footage, where the truck seems to be following the car of the ASI in the evening on 16.12.2022. This also creates doubt about the genuineness of the story projected by the prosecution. Still further, the petitioner is in custody since 17.12.2022 and has been incarcerated for more than 07 months. Challan has already been presented and the conclusion of

the trial will take considerable time and his further custody will serve no meaningful purpose. Even in the peculiar facts and circumstances of the present case, the conditions of Section 37 of the NDPS Act can very well be dispensed with.

7. In view of the above, without commenting any further on the merits, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail bonds/surety bonds to the satisfaction of the learned trial Court/Duty Magistrate/CJM concerned subject to the following conditions:-

- (i) The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade him to disclose such facts to the Court or to any other authority.
- (ii) The petitioner shall remain present before the Court on the dates fixed for hearing of the case.
- (iii) The petitioner shall not absent himself from the Court proceedings except on the prior permission of the Court concerned.
- (iv) The petitioner shall surrender his passport, if any, (if already not surrendered), and in case he is not holder of the same, he shall swear an affidavit to that effect.
- (v) The petitioner shall also file his affidavit before the concerned Court, mentioning his ordinary place of residence and number of mobile phone, which shall be used by him during the pendency of the trial. In case of change of place of residence/mobile number, he shall share the details with the concerned Court/learned Trial Court.
- (vi) In case, the petitioner involves in any other criminal activity, during the pendency of the trial, it shall be viewed seriously.
- (vii) The concerned Court may insist two heavy local sureties and may also impose any other condition, in accordance with law,

while accepting the bail bonds and surety bonds of the petitioner.

- (viii) The petitioner shall report every first Monday in English calander month before the concerned SHO between 10.00 AM to 01.00 PM till the conclusion of the trial and SHO shall mark his presence by making an entry in the rojnamcha.

8. However, it is made clear that in case the petitioner does not comply with the conditions as mentioned above, the State shall be at liberty to move an application for cancellation of bail granted to him. It is also made clear that in case the concerned SHO does not mark the presence of the petitioner in the rojnamcha, the petitioner shall be at liberty to move an appropriate application in this regard before the court of trial Court/Duty Magistrate/Chief Judicial Magistrate.

16.08.2023
mks

(N.S. SHEKHAWAT)
JUDGE

Whether Speaking/Reasoned: YES / NO
Whether Reportable: YES / NO