

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : CRM-M-22638-2022 (O&M)

Date of Decision : March 21, 2023

Harnoor Singh

.... Petitioner

VS.

State of Punjab

.... Respondent

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. Navkiran Singh, Advocate
with Mr. Naresh Jain, Advocate
for the petitioner.

Mr. Gaurav Garg Dhuriwala, Addl.A.G., Punjab.

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GURBIR SINGH, J. :

CRM-49673-2022 :

This is application under Section 482 Cr.P.C. for placing on record enquiry report dated 21.04.2022 of SHO, Police Station Taleda, District Bundi (Rajasthan), as Annexure A-1.

For the reasons mentioned in the application, the same is allowed and Enquiry Report dated 21.04.2022, of the Station House Officer, Police Station Taleda, District Bundi (Rajasthan) is ordered to be taken on record as Annexure A-1. The same be tagged at an appropriate place of the main file.

The application stands disposed of.

Main Case :

This is a petition under Section 439 Cr.P.C. for grant of regular

bail to the petitioner in case FIR No.32 dated 09.03.2022, under Section 18/29 of the NDPS Act, 1985, registered at Police Station Sadar Hoshiarpur, District Hoshiarpur (Annexure P-1).

The case in question was registered on 09.03.2022, on the basis of *Ruqa* (written communication) sent by Inspector Lakhvir Singh, Inspector CIA Staff, Hoshiarpur.

As per the version of prosecution, on 09.03.2022, Inspector Lakhvir Singh, Inspector CIA Staff, Hoshiarpur, along with other police officials namely ASI Buta Singh No.532/JR, ASI Sukhdev Singh No.668/HPR, Sr/CT Sumit Kumar No.1160/HPR, was present at Bus Stand Bajwara on a government vehicle bearing registration No.PB-07-BG-1275, which was being driven by C-II Gurpreet Singh No.1301/HPR along with a Laptop and a Printer, in connection with checking of suspected persons and patrolling duty. Night MHC, CIA (HQ), Hoshiarpur, gave information that ASI Tarlok Singh No.1717/HPR, ASI Raman Kumar No.1150/HPR, Sr/CT Jaspreet Singh No.1181/HPR had detained one person namely Harnoor Singh son of Nirmal Singh, resident of Sawalpura, Police Station Talera, District Bundi (Rajasthan) in the i-20 car bearing registration No.RJ-08-CC-0013 at Chak Sadhu barricade and there was suspicion that he was having some intoxicants. So, he was requested to reach at the spot and take action. On reaching there, ASI Tarlok Singh produced the above mentioned young-man along with his car. On asking, he disclosed his name as Harnoor Singh. Inspector Lakhvir Singh gave him his introduction and introduction of the remaining police officials. Offer was given to Harnoor Singh to get

himself and his car searched from any Magistrate or Gazetted Officer. He intended to get himself searched from Gazetted Officer. Memo to that effect was prepared. Prem Singh, PPS, DSP (City), Hoshiarpur was informed. After some time, he came at the spot along with his driver and gunman on government Bolero vehicle. He introduced himself to the petitioner and informed him that he was having suspicion that the petitioner was carrying some intoxicant substance with him or his above mentioned i-20 Car and he had legal right to be searched either from a Magistrate or some other Gazetted Officer but the petitioner reposed confidence in him. Notice under Section 50 of the NDPS Act was separately issued to him. The consent memo was prepared. From the search, one white colour plastic bag was recovered from the conductor seat of the car and on checking that bag, one black colour polythene bag containing opium was recovered. When weighed on electronic weighing machine, it was found to be 10 kgs. It was put to the same black polythene bag and a parcel was prepared after putting it into plastic box. A separate parcel of empty white plastic bag was prepared and both the parcels along with i-20 Car were taken into possession by the police.

Learned counsel for the petitioner has argued that the petitioner had completed his 10+2 and was preparing for IELTS to go to Canada for further studies. On 07.03.2022, the petitioner went to a workshop in Kota, Rajasthan for repair of his car. He returned in the afternoon and in the evening, went with his friend to attend marriage at Kota, Rajasthan, which is at a distance of about 25 kms. from his village. He was to return on the

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same evening but did not come back and his mobile phone was also switched off. He did not return that night and father of the petitioner, along with some other respectable persons, went to the office of SSP, District Bundi, Rajasthan and got recorded a missing report on 08.03.2022 of his son, bearing DDR No.23 dated 08.03.2022 at 05:50 PM. At 06:02 PM, father of the petitioner received a call through some unknown app that his son had been kidnapped and demand for ransom was made. His father and relatives started searching for their son. Some co-villagers informed father of the petitioner that the petitioner used to go to Hotel Clarks Premium. Upon this, father of the petitioner went there and checked CCTV footage of the said hotel. On checking, it was found that on 07.03.2022, the car of the petitioner was seen parked outside the hotel and some unidentified persons were also seen roaming around. The petitioner was keeping an i-phone and the i-cloud app of his phone was verified and location of his phone was found to be 09:36 PM at Rohtak, 12:50 AM on the intervening night at Petrol pump at Kurukshetra and 04:24 AM at residence of SSP, Hoshiarpur and was same up to 10:00 AM.

The uncle of the petitioner immediately went to the office of SSP, District Boondi, Rajasthan and informed that the information regarding kidnapping was correct and location of phone of the petitioner was apprised to be at Hoshiarpur. The concerned Police Station gave them three police officials and it was decided to go to Hoshiarpur. When they reached Village Ramganj Bala, Siriji Hotel, then uncle of the petitioner namely Manveer Singh and his friend Pardeep Maheshwari met father of the

petitioner. Pardeep Maheshwari then told that SSP Pathankot was known to him. So, he contacted the SSP, Pathankot and sent him the images of CCTV footages of Hotel Clarks Premium through Whatsapp and the SSP assured the father of the petitioner that he would enquire from the concerned location immediately. At that time, father of the petitioner got a phone call from Inspector Lakhvir Singh, SHO, CIA Staff, Hoshiarpur that the petitioner was implicated in the afore-mentioned FIR.

Thereafter, father of the petitioner enquired at different places and came to know various details regarding his son. On 07.03.2022, Black Verna Car of the petitioner and one Innova Car was lying parked outside Hotel Clarks Premium. Two persons were seen taking Verna Car at 11:25 PM. The same car was taken by two police officials on the same night from Kota to Hoshiarpur. The said car crossed Kishorepur Toll Plaza at 02:06 AM, Sonwa Toll Plaza at 04:02 AM, Bachwa Toll Plaza at 01:45 PM and Toll Plaza near Majri at 02:02 PM. The said car crossed through different Toll Plazas by showing their police ID and entry was there in all the Toll Plazas.

The petitioner was taken in Innova Car bearing registration No.HR-26-CZ-3014 which was seen parked in the parking of Hotel Clarks Premium. The aforesaid Innova Car was seen in the CCTV footage of Gurudwara Sahib, Bargaon, Kota. Another Bolero car with registration No.PB-07-AS-7652 was also seen outside the Gurudwara and was being driven by a Sikh Gentleman in police uniform, who submitted his ID as Gurlal Singh from Tarn Taran in the aforesaid Gurudwara.

Thereafter, on the same day i.e. 08.03.2022, both the cars i.e. Bolero and Innova stopped at Radhika Family Dhaba on Talera Kota Highway and the police officials took their meals. The petitioner was also brought out of the car and the entire incident was recorded in the CCTV footage of Radhika Family Dhaba. The petrol was also got filled in the cars on a Petrol Pump situated at Jaipur Highway. Both the cars crossed through various toll plazas and CCTV footage regarding this was obtained in a pen-drive by the father of the petitioner.

Learned counsel further apprised this Court that the above said Bolero Car No.PB-07-AS-7652 was registered in the name of DGP Punjab for SSP, Hoshiarpur and Innova Car was in the name of one Aarti wife of Om Parkash.

From the above stated facts, learned counsel for the petitioner has submitted that it was clear that the petitioner was kidnapped by the police officials on 07.03.2022 from Hotel Clarks Premium and on 09.03.2022, the present case has been planted upon him. The father of the petitioner collected entire record and on 23.03.2022, submitted a detailed representation to the Chief Minister, Punjab (Annexure P-3) and copies thereof were sent to DGP, Punjab, Human Right Commission, Punjab and SSP, Hoshiarpur.

On receiving the above-said representation, the Hoshiarpur police immediately prepared the report under Section 173(2) Cr.P.C. on 31.03.2022 and presented the same in the Court after about 20 days of registration of FIR dated 09.03.2022. The above-mentioned facts were not

brought on the file by the Investigating Officer. The entire record is available with the petitioner in a pen-drive and the relevant record is being destroyed by the police officials in order to save themselves.

It has been further contended that on the missing report lodged by the father of the petitioner, enquiry was got conducted by SHO, Police Station Taleda, District Bundi, Rajasthan and on the basis of evidence collected by him, he sent a report dated 21.04.2022 (Annexure A-1) to SP, Bundi, Rajasthan, regarding stopping the search of missing Harnoor Singh. It is further contended that the Rajasthan Police collected the evidence and FIR No.219 dated 06.05.2022, Police Station Kulhari, District Kota City, under Sections 365, 343, 394, 120-B, 115, 167 IPC as well as under Section 59 of the NDPS Act was registered against 15 Police officials of Hoshiarpur District (Annexure P-5). Under compelling circumstances, **CRM-M-17760-2022** was filed for transfer of the investigation as the local police was not conducting the fair investigation and report under Section 173(2) Cr.P.C. was presented without even discussing the cogent evidence. In the said petition, while issuing notice of motion, the Trial Court was directed to adjourn the case beyond the date fixed before this Court. Learned counsel for the petitioner has also referred to photographs brought on record as Annexure P-2. The petitioner was kidnapped from Hotel Clarks Premium and was taken to Hoshiarpur. The car of the petitioner was also shown at different Toll Plazas. On the way, Punjab Police officials were seen at a Dhaba. Their Bolero car is also seen in the photographs. It is further submitted that the petitioner has been falsely implicated by kidnapping him

from the area of Rajasthan. The case is foisted upon the petitioner. So, the provisions of Section 37 of the NDPS Act are not attracted at all and the petitioner is entitled for regular bail.

Learned State Counsel, on the other hand, while opposing the prayer made by learned counsel for the petitioner, states that no illegality has been committed by the Hoshiarpur police. To conduct inquiry on the representation made by father of the petitioner namely Nirmal Singh, SIT was constituted but Nirmal Singh, being the complainant, refused the summons and submitted that he did not want to get the matter inquired from Hoshiarpur Police.

During investigation, material evidence including electronic evidence like call details, mobile phone data of the mobile phone recovered from the petitioner i.e. i-phone 1, CCTV footages etc. were taken on record and were sent to State Cyber Crime for analysis. The State Cyber Crime, after recovering the data, sent a detailed report in electronic form in a Pen Drive which included Call Logs, Chats, Contacts, Installed Applications, Instant Messages, User Account, Audio, Documents, Images, Videos etc. The said data was further analysed. It was found that there were various recordings in which the petitioner was asking the supplier to supply 7-8 kg. Opium/material to him as he had to supply that further. It was further stated that if that supplier could not supply the said quantity of material, then he could take it from other supplier as the other supplier was ready to give 20 kg. quantity of Opium/material to him. The said voice recording is of 06.03.2022 and the FIR is dated 09.03.2022. The copy of the Audio

Recording/Voice Message recovered from the mobile phone of the petitioner is attached in the pen drive as Annexure R-1. The evidence clearly shows that the petitioner purchased the contraband from the supplier from Madhya Pradesh and thereafter, came to Hoshiarpur on 09.03.2022 to supply the same to the smuggler/peddler at Hoshiarpur but was caught red-handed at the Naka and the FIR in hand was registered.

While further analyzing the data of the petitioner's mobile, it came on record that one lady had shared many videos with the petitioner, sharing with him the method of adulterating and increasing the quantity of opium before supplying it further. The still photographs/screenshots of the videos are attached as Annexure R-2.

It was further brought on record that the petitioner came to Amritsar on 21.12.2021 and returned on 22.12.2021. On 23.12.2021, he had done whatsapp chat with a smuggler of Amritsar, whereby he was asking how much quantity of Opium/material should be supplied and with regard to money to be paid. On 27.12.2021, he was mentioning about supply of 04 kgs. Opium/material at Amritsar and mentioning about the money to be paid. On 08.03.2022, at about 07:00 PM to 08:30 PM i.e. almost 12 hours before the registration of the present FIR, the petitioner had a conversation with said smuggler of Amritsar which clearly shows that the petitioner had come to Punjab to supply the contraband. In voice messages also, at about 06:53 PM to 08:29 PM, he was stating that he wanted to meet the said smuggler. So, these messages clearly show, that he was not kidnapped/abducted as he was asking the said smuggler to switch on his

phone's internet data as he wanted to talk about some work. A copy of these voice messages is Annexure R-3, the Call Details Record of the petitioner at the relevant time is Annexure R-4 and the call log is attached as Annexure R-5. It is further argued that the travel time from Kota to Hoshiarpur is approximately 16 hours. In the voice messages, the petitioner was not found conveying his friends/associates that he had been kidnapped. Rather, he was freely using his mobile phone all the time. So, there was no question of kidnapping/abducting. Further conversation between the petitioner and one lady fully proves that the petitioner was dealing in contraband. Role of other persons is also mentioned in these chats and voice messages. The photographs attached with the petition at Hotel Radhika Dhaba clearly show that the petitioner was freely roaming in the said Dhaba and no one at the Dhaba could be seen under any pressure. In the photographs, the petitioner was seen holding a mobile phone in his hand. If this was the situation and he was having a mobile phone with him, then he could have informed his family that he was kidnapped. It is important to note that on the one hand, it was stated that the petitioner was kidnapped on 07.03.2022 and on the other hand, the electronic data of his mobile shows that his mobile was working and he was active on whatsapp calls and even normal calls on 07.03.2022 and 08.03.2022. Therefore, there was no question of any kidnapping. The staff members of Hotel Clarks Premier made statement that the petitioner was not kidnapped from the premises of their Hotel. CCTV footage of that Hotel was also collected. There is nothing which could show that the petitioner was kidnapped from there. Statements of Caretakers of

Gurudwara Shri Agamgarh Sahib, Badgaon, Kota, Rajasthan and owner of Hotel Radhika Family Dhaba at Talera, District Bundi, Rajasthan were also recorded.

It has been further contended that there is delay in registering the complaint of kidnapping of the petitioner which clearly prove that it was an after thought after coming to know about recovery of the contraband from the petitioner. When produced before the Court for taking remand in the aforesaid FIR, the petitioner did not inform the concerned Court that he was abducted. He was even produced before the Government Doctor at Civil Hospital, Hoshiarpur, even then he did not tell the Doctor about his kidnapping.

All the police personnel including Prem Singh, PPS, DSP, Sub-Division City Hoshiarpur were present in Hoshiarpur or near-by areas from 07.03.2022 to 09.03.2022. Their call-details were also taken into possession. Four police personnel, namely ASI Sucha Singh, ASI Mahesh Chander, ASI Sukhdev Singh and ASI Gurnam Singh (Gurnam Singh died during inquiry) went in search of Proclaimed Offenders to Rajasthan in the official vehicle bearing registration No.PB-07-AS-7652 and recorded Roznamcha No.16 dated 06.03.2022 regarding their departure. ASI Sucha Singh made statement that they met many people in Hotel Clarks Premier and near by areas with their secret source. On return to Hoshiarpur, they again met the source and other individuals at Radhika Dhaba on 08.03.2022.

It has been further apprised to this Court that the petitioner Harnoor Singh is having another FIR registered against him i.e. FIR No.135

dated 21.07.2021, under Sections 384, 34 IPC, registered at Police Station Jawahar Nagar, District Kota City, Rajasthan. Further, father of the petitioner Nirmal Singh is also involved in two FIRs, both under the NDPS Act. The grandfather of the petitioner namely Dyal Singh is also having three FIRs registered against him under the NDPS Act. The uncle (Taya) of the petitioner Amarjit Singh is also involved in the four cases, one of which is under NDPS Act. Therefore, the story propounded by the father of the petitioner is totally false. The fact is that 10 kgs. Opium has been recovered from the petitioner. The petition in hand deserves dismissal.

Heard.

As per version of the prosecution, 10 kgs. Opium was recovered from the possession of the petitioner. It is a commercial quantity.

Section 37 of the NDPS Act reads as under :-

“Section 37 in The Narcotic Drugs and Psychotropic Substances Act, 1985

1[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 2[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.

(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.]”

The possession of 2.5 kgs. Opium is commercial quantity. The recovery in the instant case is 10kgs. For grant of bail in such cases, the Court must be satisfied that :

- (i) the petitioner is not guilty of such offence;
- (ii) that the petitioner is not likely to commit any offence while on bail.

Whatever material is brought on record is to be seen and antecedents of accused are to be examined for recording satisfaction.

On the missing report, time is 05:50 PM on 08.03.2022. As per version of father of the petitioner, the petitioner was missing from the evening of 07.03.2022. Para no.2d of the petition is as under :-

“That the petitioner was keeping an iphone and his I cloud ID of the app was verified to find out

petitioner location and the location of the phone was found to be as under :-

At 9:36 PM his location was at Rohtak, Haryana;

At 12:50 Am on the intervening night of 08/09.03.2022 his location was at Petrol Pump, Kurukshetra;

At 4:24 AM his location was at residence of SSP, Hoshiarpur and was same upto 10:00 AM”

If this was the situation, it is strange as to why father of the petitioner did not verify the mobile location of the petitioner at the time of recording missing report, which was got recorded at 05:50 PM on 08.03.2022, whereas the petitioner had not returned at night of 07.03.2022. FIR regarding kidnapping of the petitioner was registered on 06.05.2022 (Annexure P-5).

The enquiry report dated 21.04.2022 of SHO, Police Station Taleda, District Bundi, Rajasthan (Annexure A-1) is based on electronic evidence. In this world of technology, such evidence seems to be true at the face but sometimes, it is found otherwise. Unless the said evidence is appreciated during trial, it cannot be believed. Similarly, the Enquiry Report (Annexure E-1), filed by the State, is also mainly based on electronic evidence. Admittedly, the phone of the petitioner was not switched off. He was using the same. If the petitioner was kidnapped from Hotel Clarks Premium where he was regularly going, then the employees of the said Hotel would have immediately informed the police. There is no record that

any family member of the petitioner called him during that time. The petitioner also did not send any message to his family member or to his friend that he was kidnapped. All these facts are to be appreciated during trial of the case.

The petitioner is resident of Kota, Rajasthan. The case is registered in Hoshiarpur, Punjab, a far away place. There is nothing on record that the Hoshiarpur police was inimical towards the petitioner or his family.

From what has been discussed above, it cannot be said at this stage that the petitioner is not guilty, for keeping in his possession 10 kgs. Opium. The purpose of trial is to separate the chaff from the grain and to bring truth on record. It can only be done after recording evidence of the parties and giving opportunity to respective parties to cross-examine the witnesses of other party. The menace of drugs in Punjab is eating the basic social structure of the society. It is adversely effecting the economy of the State. Despite harsh laws, the State is not able to check the flow of drugs to this part of the Country. Daily one youth after the other is succumbing to drugs. Unless harsh steps are taken, there is no ray of hope to the Society that this dark period would be over. The innocence of the petitioner can only be established during trial and not on the basis of inquiry conducted by the police of the other State.

In view of the gravity of offence, I do not find it to be a fit case to grant the concession of bail to the petitioner.

Dismissed.

However, anything stated above is only for the purpose of deciding this bail petition and would have no effect on the merits of the case or any other proceedings connected with this case.

March 21, 2023

monika

(GURBIR SINGH)
JUDGE

<i>Whether speaking/reasoned ?</i>	<i>Yes/No.</i>
<i>Whether reportable ?</i>	<i>Yes/No.</i>