

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

CRM-M-34216-2022

Date of Decision: 14.07.2023

JAGDISH CHAND

...Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Abhinav Gupta, Advocate
for the petitioner.

Mr. Harjidner S. Sidhu, A.A.G., Punjab.

HARSH BUNGER, J.

Petitioner (Jagdish Chand) has filed this petition under Section 439 of the Code of Criminal Procedure seeking grant of regular bail in case FIR No.159 dated 09.12.2021, (Annexure P-1), under Section 15(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act'), registered at Police Station Dialpura, District Bathinda.

2. Reply by way of an affidavit of Sh. Aaswant Singh, PPS, Deputy Superintendent of Police, Sub-Division Phul, District Bathinda, on behalf of respondent-State of Punjab has been filed, which is already on record.

3. Custody certificate dated 14.05.2023 of the petitioner has been filed by learned State counsel, in the Court, which has been taken on record vide order dated 16.05.2023.

4. Briefly, the afore-said case FIR was registered on the complaint of Sukhpal Singh, ASI, Police Station Dialpura, alleging therein that on 09.12.2021, when he along with other police officials was present at Bus Stand Aklia Jalal on government vehicle bearing registration

No.PB03-AP-2329 in connection with patrolling and search of bad elements, then at about 2:50 p.m., a special informer came and informed that Jagdish Chand son of Madan Lal resident of Patti Gill, Village Aklija Jalal, is doing the work of selling poppy husk in his residential house and on that day also, he was in the process of selling poppy husk and if immediate raid is conducted at his house then he can be apprehended with huge quantity of poppy husk. Finding the information as true and reliable, a *ruqa* was prepared and sent to the police station for registration of the case and Deputy Superintendent of Police concerned was also intimated to reach on the spot.

5. As per the reply, upon receipt of *ruqa* at Police Station Dialpura, a request was made to Deputy Superintendent of Police, Sub Division Maur, District Bathinda, to reach at the spot; where he was explained regarding the circumstances and under the supervision of said Deputy Superintendent of Police, police party headed towards the house of the petitioner and on the way, Sarpanch Lakhvir Singh son of Gurcharan Singh, was also joined in the police party and then the raid was conducted on the house of the petitioner. It is stated that since the main gate of the house of the petitioner was lying open; accordingly, the police party entered the residential house of the petitioner where an old man was seen sitting on a plastic bag in the room constructed opposite to the courtyard, who was searching another plastic bag lying in front of him. Upon seeing the police party, he tried to abscond; however, he was apprehended with the help of the police party and upon enquiring about his details, he disclosed his name as Jagdish Chand (petitioner). Thereafter, in the presence of the witnesses, including Sarpanch Lakhvir Singh, Deputy Superintendent of

Police, introduced himself to the petitioner and further notice under Section 50 of the NDPS Act was served upon him and making him aware of his legal rights. Petitioner-Jagdish Chand, consented for getting search conducted by aforesaid Deputy Superintendent of Police, Maur; accordingly, the search of plastic bags lying in the house of the petitioner was carried out and eight plastic bags containing poppy husk were recovered. On weighing the same, 20 kgs. of poppy pods along with the weight of the plastic bag was recovered from 07 plastic bags; however, 10 kgs. poppy pods along with the weight of the plastic bag, was recovered from the 8th bag. Accordingly, total 150 kgs. of poppy pods along with the weight of the plastic bags were recovered. After following the procedure, the samples were drawn and were sent to the Regional Testing Forensic Science Laboratory, Bathinda. As per the report dated 07.01.2022 given by the Office of Regional Testing Forensic Science Laboratory, Bathinda, all the eight samples containing poppy pods contained “*Meconic Acid, Morphine & Alkaloids of opium*” and it was stated that the same fell within the “commercial quantity”.

6. Learned counsel for the petitioner submitted that the petitioner is innocent and has been falsely implicated in the present case. It is submitted that the said FIR was registered merely on the basis of secret information and the alleged recovery has been planted by ASI Madan Lal. It is submitted that the mandatory provisions of NDPS Act have not been complied with. It is submitted that son of the petitioner had also submitted a complaint to Senior Superintendent of Police, Bathinda against Sub Inspector Manpreet Singh of Police Station Dialpura and 4-5 other police officials, for forcibly trespassing into the house of the petitioner without a

warrant and committing theft of cash more than Rs.50,00/-. He stated that the said police personnels had also taken away the CCTV cameras installed in the house of the petitioner in order to eliminate the evidence of crime committed by the said police officials. It is also submitted that in fact, there is a land dispute between the family of the petitioner and one Kulwinder Kaur wife of Sher Singh, who is residing in front of the house of the petitioner. She (Kulwinder Kaur) had sold land measuring 4 kanals in favour of the petitioner's family and received sale consideration but later on, refused to execute the sale deed. It is submitted that the said land was got transferred in the name of the petitioner under the orders of the Court and due to the said reason, they nurtured a grudge against the petitioner and his family. It is submitted that it is said Kulwinder Kaur, her husband Sher Singh and their son Amna, who indulge in illegal activities and have also been convicted/sentenced in NDPS cases and it is at their instance, the petitioner has been falsely implicated.

Learned counsel for the petitioner has further stated that on 09.12.2021 at about 8:00 a.m., Station House Officer-Manpreet Singh of Police Station Dialpura, along with some police officials had raided the house of the petitioner and had forcibly taken him to the police Station Dialpura and the said police officials also took away Rs.1,50,000/-, gold ornaments weighing 3-4 tolas including one gold chain and mobile belonging to the petitioner and also removed the CCTV cameras installed on the gate of the house of the petitioner. Thereafter, at about 11:00 a.m., Sub Inspector Sukhpal Singh along with police party including lady constable Bhupinder Kaur brought the petitioner back to his house and planted the alleged recovery upon him by showing that the same was recovered from his house. It is submitted that the petitioner had moved an

application for preservation of CCTV footage of the cameras installed on the main gate of Police Station Dialpura and the trial Court, vide order dated 16.03.2022, had directed the Nodal Officer of the Police Station Dialpura, to preserve the CCTV footage. Learned counsel for the petitioner further contended that in a similar manner, the petitioner was implicated in another FIR No.93 dated 09.06.2021 under Section 15 of the NDPS Act, registered at Police Station Nihal Singh Wala, District Moga and son of the petitioner namely, Chaturvedi Sharma, submitted a complaint to the Vigilance Bureau for registration of FIR against the delinquent officials; whereupon, FIR No.02 dated 05.04.2022 under Section 7 and 7(a) of the Prevention of Corruption Act, 2018, has been registered against the delinquent officials and thus, the police was continuously pressurizing them to withdraw the aforesaid case and since the said case was not withdrawn; accordingly, the petitioner has now been falsely implicated in the instant case FIR.

Learned counsel for the petitioner further submitted that the petitioner was arrested in this case on 09.12.2021. It is submitted that the investigation in the case is complete; challan stands presented before the trial Court and even the charges have been framed against the petitioner on 30.07.2022. It is next submitted that there are total 11 prosecution witnesses; however, none of the witnesses has been examined till date. Thus, the conclusion of the trial shall take a long time and no useful purpose would be served by keeping the petitioner in custody for indefinite period. It is stated that the petitioner is ready to abide by any condition as may be imposed by this Court or by the trial Court, accordingly prayer for regular

bail is made.

7. Per contra, learned State counsel has opposed the prayer of petitioner for grant of regular bail on the ground of seriousness and gravity of the offence. While referring to the reply, learned State counsel has submitted that the recovery of 150 kgs. of poppy pods falls under the category of “Commercial Quantity” and thus the bar under Section 37 of NDPS Act is attracted. It is further submitted that the petitioner does not have clean antecedents as he is also involved in three other cases under the NDPS Act. It is further submitted by learned State counsel that in case, the petitioner is extended the benefit of regular bail then there is every likelihood that he may influence prosecution witnesses or may even abscond and thus delay the trial. Accordingly, it is urged that the petitioner do not deserve the concession of regular bail and thus the instant petition may be dismissed.

8. I have heard learned counsel for the parties and perused the paper book as well as the replyfiled on behalf of respondent-State of Punjab.

9. In the instant case, 150 kgs. of poppy pods were recovered from the house of the petitioner which falls under the category of “Commercial Quantity” and thus the rigors of Section 37 of NDPS Act are attracted. Section 37 of the NDPS Act, 1985, is reproduced hereunder:-

“[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 [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.].”

Hon’ble the Apex Court in ***Union of India vs Rattan Malik @ Habul 2009(1) RCR (Criminal) 938***, has held that when an accused is arrested in a case under the NDPS Act, 1985 then grant of bail to that accused is not only subject to limitation imposed under Section 439 of the Code of Criminal Procedure, but it is also subject to the restrictions placed by Section 37 of the NDPS Act, 1985 and the accused can be granted bail only if the Court is satisfied that there is a reasonable ground for believing that accused was not guilty of offence and also that he was not likely to commit any offence under the NDPS Act, 1985 while on bail.

10. In the present case, there is nothing on record so as to enable this Court to record a *prima facie* satisfaction as required under Section 37 of the NDPS Act; moreso, when the petitioner is involved in three other cases i.e. *FIR No.108 dated 01.08.2018, under Section 15 of the NDPS Act, at Police Station Dialpura; FIR No.119 dated 05.09.2019, under Section 15 of the NDPS Act, registered at Police Station Dialpura and FIR No.93 dated 09.06.2021, under Section 15 of the NDPS Act, registered at Police Station Nihal Singh Wala, District Moga*. Moreover, the question as to whether the mandatory provisions of the NDPS Act were complied with or not, is a question of fact which requires to be decided at the time of trial.

11. Furthermore, when the accused is facing serious charges, he may develop temptation to jump the bail. The apprehension expressed by the State counsel that if released on bail, there is every likelihood of the petitioner trying to tamper with the prosecution evidence by giving threats and inducement to the prosecution witnesses and absconding even to prolong the trial, cannot be brushed aside lightly. Apart from the above, there is every possibility that the petitioner may take path of crime again, in case, he is enlarged on bail.

12. So far as the averments regarding false implication at the hands of police officials is concerned; suffice it to say that on one hand, the petitioner is alleging false implication at the instance of Kulwinder Kaur, her husband Sher Singh and their son Amna, with whom the petitioner's family was having a land dispute and on the other hand, the petitioner is alleging false implication at the instance of Station House Officer-Manpreet Singh of Police Station Dialpura, by submitting that at the instance of the petitioner's son, a case FIR No.02 dated 05.04.2022 was registered against certain police officials and the police was pressurizing them to withdraw the said case and since the said case was not withdrawn; accordingly, the petitioner has been falsely implicated in this case. At this stage, the said contention of the petitioner cannot be considered as the same would be considered by the trial Court during the course of the trial.

13. In view of the above, the present petition under Section 439 Cr.P.C. seeking grant of regular bail to petitioner (Jagdish Chand) in case FIR No.159 dated 09.12.2021, under Section 15(c) of the NDPS Act, registered at Police Station Dialpura, District Bathinda; is hereby dismissed.

14. Nothing stated here-in-above shall be construed as an expression of opinion on the merits of the case and the trial would proceed independently

of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

15. Pending application/s, if any, shall also stand disposed of.

July 14th, 2023
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No