

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

CRM-M No.38920 of 2023 (O&M)

Date of decision : 17.10.2023

Jasvir Kaur

..... Petitioner

versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. Varun Katyal, Advocate and
Mr. Bhanu Chaudhary, Advocate
for the petitioner.

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

PANKAJ JAIN, J. (ORAL)

1 This petition has been filed under Section 439 Cr.P.C. for grant of regular bail in case F.I.R. No.10 dated 24.01.2023 registered under Sections 25/54/59 of Arms Act & Sections 15(C)/25/27/29 of NDPS Act (added later on) at Police Station Sardulgarh, District Mansa.

2 Learned counsel for the petitioner relies upon orders passed by this Court in **CRM-M-42722 of 2023** dated 05.09.2023 whereby co-accused namely Satnam Singh @ Bhalwan stands admitted to bail observing as under :-

“3 *Learned counsel for the petitioner has drawn attention of this Court to FIR No.0017 of even date registered at 17:33 hrs. for offences punishable under Sections 379B(2), 506 and 34 IPC registered at the behest of PHG Vijay Kumar, who claimed as under :-*

“I and S.I. Gurmel Singh No.735/Bathinda who is also posted at Special Staff, Bathinda, were standing on the main Goniana Road, near Bus Stand, Bathinda, then S.I. Gurmel Singh went to the medical shop on the another side

of the road for taking medicine then it will be 12:20 noon time, then one car came from Fauji Chowk side stopped near me, out of which three young men alighted, out of them two were carrying iron rods, the young man who was empty handed pushed me aside and tried to snatch Glock tying with my dub when I resist then they all said that if you speak then we will kill you with the rods, in the meantime they snatched my Glock pistol from me forcibly and only HR-51 of white Swift car could be read, in which two unknown ladies were also sitting they ran away the car towards 1.1.1. Chowk Talwandi Sabo Road. In the meantime S.I. Gurmel Singh also reached. Till now we were searching them by riding in our car but above young men and ladies have not met us. I can recognize all the three young men and their Swift car if brought before me. The above snatched Government Glock Pistol is FRK090, in which 8 live cartridges were loaded. Legal action be taken against all the three young men and unknown ladies. Sd/- Vijay Kumar above said. Statement corroborated Sd/- S.I. Gurmel Singh No.735 Special Staff Bathinda.”

4 *Thereafter, the present FIR i.e. FIR No.10 dated 24.01.2023 came into being at 18:10 hrs. claiming as under :-*

“then during nakabandi one Swift Car bearing No.HR51BC-9372 was seen coming from the side of main road Sardulgarh village Kahnawal, which was driven by one hair cut person, then myself SI on the basis of suspicion signalled to stop the car driver, the car driver tried to immediately returned back the above car then myself S.I. with the help of police employees apprehended car driver and asked his name and address who disclosed his name as Satnam Singh alias Balwan son of Amrik Singh resident of Meerpur Kalan and the persons sitting on left seat disclosed his name as Harwinder Singh alias Happy son of Jasveer Singh resident of Bhaloor, Police Station Bagha Purana, District Moga and the persons sitting the left side disclosed his name as Lachhman Singh son of Jagdev Singh and a lady adjacent to him disclosed her name as Jasveer Kaur wife of Lachhman Singh residents of Meerpur Kalan and the lady sitting adjacent to her disclosed her name as Gagan Kumari alias Janveer wife of Harwinder Singh

resident of Bhallow, Police Station Bagha Purana, District Moga, upon this myself S.I. by alighting above Satnam Singh alias Balwan from the vehicle searched him then he was wearing kurta payjama, the pistol Glock 9MM body No.FRK090 was recovered from the dab of kurta, which was checked by myself S.I. the pistol Glock come from the car. Thereafter myself ASI by removing the magazine of pistol Glock 9MM and checked the same, from its magazine, five live cartridges of 9MM were recovered and conducted the search of above Harwinder Singh alias Happy sitting adjacent to him then four live cartridges of 9MM was recovered from the right pocket of his lower, upon this myself S.I. on demanding the license of Arms and Ammunition from above Satnam Singh alias Balwan and Harwinder Singh alias Happy of recovered pistol Galock and live cartridges, they could not produce any arms license etc. Thereafter myself S.I. has prepared the sketch of pistol Glock separately and the recovered pistol Glock and magazine alongwith 5 live cartridges 9MM was placed in one plastic box by preparing separate parcel the parcel was sealed with my seal 3.s and four live cartridges 9MM recovered from above Harwinder Singh by putting in plastic box prepared a separate parcel and sealed with my seal J.S', sample seals were prepared separately. Seal after use was handed over to Hawaldar Sukhpal Singh 223/Mansa. Thereafter on searching the car bearing No.HRS1BC-9273 myself SI, no document of ownership etc. was recovered. Thereafter myself SI recovered pistol Glock alongwith meazine with 5 live cartridges 9MM duly sealed and one parcel of 4 live cartridges 9MM duly sealed and sample seals the above car was taken under police possession through separate memo. The memo was signed by the witnesses. Satnam Singh alias Balwan and harwinder Singh alias Happy, Lachhman Singh, Jasveer Kaur, Gagan Kumar alias Jasveer above said by keeping the illegal pistol Glock alongwith magazine, 9 live cartridges, car without license in their possession have committed offence under section 25/54/59 Arms Act.”

5 *Learned counsel for the petitioner contends that falsity of the contents of the FIR can be gauged from the fact that in the initial FIR No. 0017, it is claimed that the pistol was snatched from police official at*

12:20 noon and the FIR came into being only on 17:33 hrs. which further led to the present FIR on 06.10 P.M. and during investigation offences punishable under NDPS Act were added after recovery was allegedly made from the house of co-accused namely Lachhman Singh and Jasveer Kaur. No recovery has been effected from the petitioner under the NDPS Act and thus the Court below erred in denying the bail plea filed by the petitioner by invoking Section 37 of the NDPS. So far as the FIR No.0017 is concerned, the petitioner already stands admitted to bail by the lower Court vide order dated 21.07.2023.

6 Petitioner is behind bars since 24.01.2023. Challan stands presented. Investigation already stands concluded. Co-accused Gagan Kumari @ Jasveer stands admitted to bail vide order dated 16.03.2023 passed in **CRM-M-121113 of 2023**.

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

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

9 Keeping in view the aforementioned facts, without commenting on the merits of the case and the period already spent by the petitioner, the present petition is allowed.”

and claims that though 51 kg of poppy husk is stated to have been recovered from the house of the petitioner but the same is not on the disclosure made by her but on the disclosure made by one Harwinder Singh. He further submits that even as per prosecution all the accused were in knowledge of the contraband and thus the fact cannot be stated to have been discovered merely on the basis of statement made by the petitioner and thus Section 27 of the Evidence Act, itself will not be attracted.

4 The petitioner has been in custody since 24.01.2023. Investigation already stands concluded.

5 *Per contra* learned State counsel, however, submits that the petitioner is a habitual offender and has 3 more FIRs including one under the NDPS Act though which is intermediate quantity and the petitioner already stands admitted to bail in the said cases.

6 It has been further contended that as per law even if joint recoveries can be said to have been made the same *qua* the petitioner cannot be read as whole and has to be distributed. Resultantly, it would fall within the classification of intermediate quantity only and thus rigorous of Section 37 of the Act will not be applicable. Further reliance is being placed upon order dated 16.03.2023 passed in CRM-M-12113-2023 whereby co-accused Gagan Kumar @ Jasveer stands admitted to bail observing as under :-

“XXX XXX XXX

Evidently, the petitioner is behind bars since 24.01.2023. Regarding the kidnapping of the petitioner by co-accused Harwinder Singh, there was FIR already registered two days prior to the present FIR. The weapon and the cartridges were recovered from the car i.e. from the co-accused. Thereafter, recovery of 51 Kgs poppy husk was also recovered on the disclosure statement of the co-accused from his home. Even otherwise recovered poppy husk is 51 Kgs, which is marginally above the commercial quantity. There is nothing on record to show that the petitioner has any criminal antecedents. There is no other evidence on record for drawing the satisfaction under Section 37 of NDPS Act for the complicity of the petitioner in the present case. The matter is under investigation and the veracity of the allegations would be evaluated by the learned trial Court on the basis of the evidence to be led by both the parties before it. However, considering the prayer for grant of bail to the petitioner, I am of the view that learned counsel for the petitioner has been able to make out a case for grant of regular bail to the petitioner. The trial would take sufficiently long time for its conclusion.”

7 Having heard rival contentions and after going through the records of the case, without commenting on the merits of the case and in view of the incarceration suffered by the petitioner and the fact that the prosecution itself is not sure as to on whose statement the contraband was discovered, 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 while on bail.*
- (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 that anything observed herein shall not be construed to be an opinion on the merits of the case.

(PANKAJ JAIN)
JUDGE

17.10.2023
Pooja sharma-I

Whether speaking/reasoned	Yes
Whether Reportable :	No