

CRM-M-41524-2022

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-41524-2022
Reserved on: 25.04.2023
Pronounced on: 19.05.2023

Nirvair Singh @ Nirvail Singh ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Piyush Sharma, Advocate for the petitioner.

Mr. Virat Rana, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
60	19.05.2022	Lakho Ke Behram, District Ferozepur	15, 22, 25, 29 of NDPS Act 1985

1. The petitioner, apprehending arrest for violating the above-mentioned provisions of Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS Act) as per the FIR captioned above, on the allegations of transporting 140 kg of poppy straw and 50000 tablets of tramadol in his truck, by concealing it under coal, from which the police had seized the same, has come up before this Court under Section 438 CrPC seeking anticipatory bail.
2. In paragraph 7 of the bail petition, the accused declares that he has no criminal antecedents.
3. The petitioner’s counsel contends that the pre-trial incarceration would cause an irreversible injustice to the petitioner and family.
4. The State’s counsel opposes the bail.
5. The facts of the case are being extracted from para 1 & 2 of status report, which read as follows:

“1.That present case bearing FIR No.60 Dated 19.05.2022 U/s 15/22/25/29 NDPS Act Police Station LakhoKeBehram has been registered against Nirvair Singh (Petitioner), Kulwant Singh and Gurkirtan Singh on the basis of secret information. Breif acts of the case are that on 19.05.2022 a police party headed by Inspector Parminder Singh of Incharge CIA Staff, Ferozepur reached in front of Gurudwara Sahib of village Kari Kalan, then a secret informer met with police party and informed that petitioner Nirvair Singh is indulged to sell the intoxicant and

Kulwant Singh is working as driver and Gurkirtan Singh is working as Cleaner in a Ghora Tralla bearing PBOSAB-8049 they in connivance with each other use to take intoxicants from Rajasthan and sell the same. Said vehicle is coming from Gujarat after loading coal. Under the coal intoxicant tablets and poppy husk has been concealed. Said intoxicant tablets and poppy husk has been called by petitioner Nirvair Singh through Kulwant Singh and Gurkirat Singh. In case barricading is held at Ferozepur-Fazilka Road, then huge quantity of intoxicant tablets and poppy husk can be recovered from said truck. On the basis of said information Inspector Parminder Singh sent ruqa to the police Station got registered the present case. On the basis of said information Inspector Parminder Singh alongwith police party started barricading opposite to Grain Market, on Ferozepur-Fazilka road. After sometime one Ghora Trola bearing No. PB05AB-8049 came from Fazilka side. Inspector Parminder Singh got stopped said vehicle by giving signal. On enquiry driver of said vehicle disclosed his name as Kulwant Singh and cleaner disclosed his name as Gurkirtan Singh. Then GO Inspector Parminder Singh introduced himself to said Kulwant Singh and Gurkirtan Singh and told them that he has doubt that there is intoxicant substance in the vehicle, but they have legal right to get conduct the search in presence of any gazetted officer or any Magistrate. Then both of them replied that they wants to get conduct the search in presence of any gazetted officer. On this memos of non consent were prepared. Then Inspector Parminder Singh contacted with Arun Mundan, DSP (NDPS), Ferozepur and after informing all the facts to him, he requested him to reach at the spot. After sometime DSP (NDPS), Ferozepur reached at the spot and he introduced himself to said Kulwant Singh and Gurkirtan Singh and told them that he has doubt that there is intoxicant substance in the vehicle, but they have legal right to get conduct the search in presence of any other gazetted officer or any Magistrate. Then both of them replied that they have faith upon DSP (NDPS), Ferozepur and he can conduct his search. On this memos of consent were prepared. Then as per directions of DSP (NDPS), Ferozepur, Inspector Parminder Singh conducted the search of said truck, then 8 plastic bags were recovered, which were concealed under coal loaded in said truck. On checking of said bags, poppy husk was recovered from 7 bags, on measuring its weight each bag was weighing 20 kg. Said bags were numbered as 1 to 7. Whereas from the 8th bag 5000 strips of Tramadol HCL SR tablets IP 100 mg TMD-100 SR were V recovered. each strip containing 10 tablets, in this way total 50000 tablets were recovered. Parcel of said intoxicant tablets was prepared by storing the same in said plastic bag. All said bags were sealed by Inspector Parminder Singh with his seal PS and sample seal was prepared separately. DSP (NDPS), Ferozepur also affixed his seal over said 8 bags and sample seal. During investigation of the case, the registered owner of said truck namely Sukhchain Singh son of Didar Singh resident of village Kaluwala PS Mallanwala was nominated as accused vide DDR No.22 Dated 20.10.2022. That as per FSL report Morphine and other Alkaloids of opium were recovered from parcels no.1A to 7A, whereas Tramadol intoxicant tablets. Copy of FSL as salt was report found from is the attached R-1. After completion of investigation qua Gurkirtan Singh and Kulwant Singh challan was

presented before the Ld. Court on 14.11.2022 and same is fixed for 29-04-2023 for appearance of accused.

2. That police is trying to arrest the petitioner and said Sukhchain Singh. so investigation qua them is still going on. However, during investigation call detail of petitioner was obtained from which it is proved that petitioner was remained in touch with accused Gurkirtan Singh and Kulwant Singh. Copy of call detail is attached herewith as annexure R-2. It is also submitted here that account statement of petitioner has also been obtained according to which there are suspected transactions between 16.05.2022 and 17.05.2022. Copy of account statement is attached herewith as Annexure R-3.”

6. The quantity allegedly involved in this case is commercial and the rigours of S. 37 of the NDPS Act apply in the present case. The burden is on the petitioner to satisfy the twin conditions put in place by the Legislature under Section 37 of the NDPS Act.

7. The police has collected the evidence that the petitioner is the owner of truck and contraband. A perusal of the bail petition does not refer to anything which would discharge the burden under section 37 of NDPS Act. Rather, the bail petition is cryptic and has no explanation to satisfy the rigors of section 37 of NDPS Act. In the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner fails to make a case for anticipatory bail under section 438 CrPC.

8. Any observation made hereinabove is neither an expression of opinion on the case's merits, neither the court taking up regular bail nor the trial Court shall advert to these comments.

Petition dismissed. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

19.05.2023
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Whether speaking/reasoned: Yes
Whether reportable: No.