

217

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-45328-2022

Date of Decision: 12.12.2023

Raman Kumar @ Rinku

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Ruhani Chadha, Advocate,
for the petitioner.

Mr. G.S. Sidhu, AAG, Punjab.

JASGURPREET SINGH PURI, J. (ORAL)

1. The present petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case bearing FIR No.103 dated 03.05.2022, under Sections 22 NDPS Act, 1985, registered at Police Station Salem Tabri, District Ludhiana.

2. Learned counsel for the petitioner submitted that the petitioner is in custody for 1 year 7 months and 10 days and the charges in the present case were framed on 14.07.2022 and 4 prosecution witnesses have been examined fully and 2 witnesses have been examined partially. He further submitted that the petitioner has been falsely implicated in the present case under the garb of anti-narcotics drive. He also submitted that the petitioner has been targeted because of the fact that he was involved in one more case under the NDPS Act and later on, he was convicted but in that case, he has

been nominated on the basis of disclosure statement of the co-accused.

3. To substantiate his arguments pertaining to false implication, he referred to Para No.6 of the petition wherein it has been specifically stated that on 03.05.2022 i.e. the date of the FIR, an information was received by the police at 8.35 hrs. and in fact the factual position is that in the afternoon two officials of the CIA staff having a car bearing registration No.PB10EL0547 came to the house of the petitioner in civil uniform and they took the petitioner to the police station and thereafter, in the evening, the present case was planted upon him. He further submitted that in fact this incident was captured in the CCTV camera which was so installed in the street from the footage it is clear that two police officials in the civil uniform were taking the petitioner along with them. He also submitted that this Court in view of the serious allegations levelled by the petitioner, had directed that an affidavit shall be filed by an officer not below the rank of SSP and it was also observed by way of the aforesaid order that it is expected that the officer filing affidavit before this Court will apply his independent mind to the allegations levelled by the petitioner in the present case. He further submitted that thereafter, an affidavit has been filed by the Deputy Commissioner of Police (Detective), Ludhiana dated 04.05.2023 in which it has been so stated in Para Nos.3 & 4 that on 03.05.2022 at about 2:50 Noon, ASI Baljit Singh and Constable Sukhdev Singh of CIA-2, Ludhiana had gone to Mohalla Ashok Nagar, Salem Tabri, Ludhiana in order to curb the menace of intoxicant in the society and to know the whereabouts of the Drug Peddlers and inquiries were made from the residents of the area and the

CRM-M-45328-2022

checking was done in a routine manner. He submitted that it has also been stated in the affidavit that in the CCTV footage it can be seen that some time, the petitioner is going behind the police officials and other time, on the right side of the police officials on foot i.e. by walking which shows that the petitioner was neither in the custody nor was the petitioner physically caught by the police and the timing of the said CD is 2:50 Noon. He also submitted that so far as the presence of the petitioner with the aforesaid two police officials, who were taking away the petitioner along with them is concerned, the same has been so admitted by the Deputy Commissioner of Police in his affidavit, but he has given a justification that the petitioner was only seen walking along with them and it cannot be construed that he was taken into custody. He also submitted that even the petitioner is not stating that he was taken to the police station by force by the two police officials and after being taken to the police station, the present case was planted upon the petitioner late in the evening. He further submitted that once in the affidavit, it has been so admitted that the CD is not fake and forged and the petitioner is seen along with two police officials then it is a case of false implication. He submitted that apart from the above, considering the custody of the petitioner as well, he may be considered for grant of regular bail. He also submitted that the recovery from the petitioner was shown to be 3600 tablets of *Alprazolam* and 1500 tablets of *Tramadol Hydrochloride* and further submitted that although the aforesaid quantity, which has been falsely planted upon him, falls in the category of commercial quantity under the NDPS Act, but in view of the aforesaid facts and circumstances, the bar

contained under Section 37 of the NDPS Act will not apply to the petitioner.

4. On the other hand, Mr. G.S. Sidhu, learned Assistant Advocate General, Punjab on instructions from the police official, who is present in Court today, submitted that so far as the custody of the petitioner is concerned, the same is not in dispute and it is also not in dispute that after the framing of the charges, 4 witnesses have been fully examined and 2 witnesses have been partially examined. So far as the allegation of the petitioner regarding false implication is concerned, while referring to the affidavit filed by the Deputy Commissioner of Police he submitted that a perusal of the CD which was also sent to the State Cyber Lab for analysis, in which, the petitioner is certainly seen along with two CIA officials but it cannot be said that the petitioner was forcefully taken by them and the time in the CD is also at about 2:50 Noon and the two officials, who are seen in the CD are ASI Baljit Singh and Constable Sukhdev Singh of CIA-2, Ludhiana and the complainant of the present case is also ASI Baljit Singh at the time when the FIR was registered. He has however opposed the grant of regular bail to the petitioner on the ground that the quantity involved in the present case is commercial quantity and therefore, the bar contained under Section 37 of the NDPS Act will apply in the present case and also on the ground that the petitioner is involved in one more case under the NDPS Act in which he has been convicted.

5. I have heard the learned Counsels for the parties.

6. The present FIR was lodged on the basis of the fact that the police party was patrolling in their Government car when the *Nakabandi* for

checking was laid down in search of suspicious and bad person then in the meantime, one motorcycle bearing registration No.PB10BT4970, colour black and red came, on which there were two men, when the ASI became suspicious they were told to stop and the driver of the motorcycle after seeing the police party got perplexed and tried to turn the motorcycle towards his right hand side and when he was turning back his motorcycle, the same suddenly got slipped and the said motorcycle got stopped due to falling down. On the handle of the motorcycle there was a heavy polythene tied and due to falling down of the motorcycle, the polythene got torn and the substances inside were scattered and on apprehending the persons, they told their names to be Raman Kumar alias Rinku son of late Rajinder Kumar and Babu Kumar son of Raj Kumar.

7. The grievance of the petitioner is based upon false implication. This Court vide order dated 11.10.2022 had directed the State to look into the allegations levelled by the petitioner and to file an affidavit of an officer not below the rank of SSP. The allegations pertaining to false implication made by the petitioner are that on the same date i.e. on 03.05.2022, he was taken away by two CIA staff consisting of two police officials, namely, ASI Baljit Singh and Constable Sukhdev Singh and to substantiate that he has also attached the CD of the CCTV footage which was installed in the street and the same was also sent to the police to which they have also got verified from the Cyber Lab. So far as the contents of the CD etc. are concerned, they are not disputed by the State. During the course of arguments, the aforesaid CD was also shown to this Court and the learned State Counsel.

The petitioner was seen walking in between the aforesaid two police officials of CIA staff as per the learned counsel for the parties. The time of 2:50 Noon is also not disputed by the learned State counsel. In this way, the date and time of CD is not disputed by the State. However, a justification has been put forth by the DCP, who has filed the affidavit that they were going in a routine manner since the police had gone there for routine checking. This Court is of the view that the plea of false implication cannot be ruled out and at the time of trial, the same can be proved in accordance with law if at all. However, for the purpose of considering the plea of the petitioner for grant of regular bail, the aforesaid CD is certainly a relevant factor since the freedom of a person is involved. The learned counsel for the petitioner also stated that so far as the conviction of the petitioner in the other case is concerned, in that case, he was nominated on the basis of the disclosure statement of the other co-accused and was also falsely implicated and it was only because of that reason that he has been falsely implicated in the present case in view of the fact that the State has started a drive against narcotics in which many innocent persons are picked up. Therefore, considering the aforesaid facts and circumstances, this Court is of the view that since the possibility of false implication cannot be ruled out, the bar contained under Section 37 of the NDPS Act will not apply to the petitioner especially considering the aforesaid affidavit filed by the DCP and also considering the custody of the petitioner, which is stated to be 1 year, 7 months and 10 days , he deserves the concession of regular bail.

8. Consequently, the present petition is allowed and the petitioner is ordered to be released on regular bail on furnishing bail bond/surety bond to the satisfaction of the trial Court/Duty Magistrate concerned, if not required in any other case.

9. However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is only meant for the purpose of decision of present petition.

12.12.2023
Bhumika

(JASGURPREET SINGH PURI)
JUDGE

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| 1. Whether speaking/reasoned: | Yes/No |
| 2. Whether reportable: | Yes/No |