

CRM-M-53046-2021

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-53046-2021
Reserved on: 21.04.2023
Pronounced on: 17.05.2023

Bhupinder Singh and another ...Petitioners

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Ankur Jain, Advocate for the petitioners.

Mr. Harsimar Singh Sitta, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
69	07.04.2021	Khanna City-2 Khanna, District Ludhiana	21 of NDPS Act and subsequently added Sections 61/85 of NDPS Act.

1. The petitioner incarcerated for violating the above-mentioned provisions of Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS Act) per the FIR captioned above, has come up before this Court under Section 439 CrPC seeking bail.
2. In para 14 of the petition, the petitioners declare that they have no criminal history.
3. On 22.12.2021, a Co-ordinate Bench of this Court had passed the following order:-
- “Custody certificate filed in the court is taken on record.
Counsel for the petitioners has submitted that the petitioners have been falsely implicated in the case and he has sufficient evidence to prove the same. It is further submitted that the Senior Superintendent of Police, Faridkot, be directed to file a specific affidavit on the allegations made in Para 6 and 7 of the present petition.
Adjourned to 07.02.2022.
In the meantime, the Senior Superintendent of Police, Faridkot, is directed to file the affidavit after re-verifying the entire investigation or or before the next date of hearing.”*

After that, the reply was filed. Vide order dated 02.04.2022, Co-ordinate bench of this Court after considering the reply/affidavit of the concerned Senior Superintendent of Police, granted interim bail to the petitioners, which is continuing till date. It would be appropriate to reproduce the order dated 02.04.2022:-

“During the course of arguments, it transpires that a petition filed by the

CRM-M-53046-2021

petitioners for transferring the investigation to some other independent agency like CBI, is pending for 19.09.2022.

Since the petitioners have raised the substantive points which are based on the CCTV footage and its photographs and the same are not specifically replied in the affidavit of the Senior Superintendent of Police, Khanna.

List again on 29.04.2022.

The Registry is directed to list the case file of CRM-M-No.22467 of 2021, with this case on the adjourned date.

Till the next date of hearing, the petitioners are directed to be released on interim bail subject to their furnishing bail/surety bonds."

On 29.04.2022, again reply was filed. I have gone through the reply and deems it appropriate to reproduce para Nos.4 to 8 & 13 of the said reply, which are as under:-

"4. That in view of the above stated order, it was incumbent upon the petitioners or their family members to pay the expenses and same quality DVR to the organization from which the DVR was to be taken into possession. The above said order was sent to the office of deponent by the concerned court and the same was received on 30.04.2021. Thereafter, immediately, the deponent forwarded the above said order to I/C CIA Staff, Khanna for necessary action and compliance immediately. The copy of the order dated 27.04.2021 with forwarding remarks is attached as Annexure R-1/1.

5. That after receipt of order by incharge of CIA Staff, Khanna, the same was immediately complied with. The incharge CIA Staff, sent letter no.91/5A, dated 30.04.2021, letter no.89/5A dated 30.04.2021, letter no.90/5A dated 30.04.2021, letter no.88/5A dated 30.04.2021 to (1) Director/Owner of Pristine Mall (2) Manager Union Bank of India, (3) Director/ Owner of Kanchan Feed Factory, (4) Manager Axis Bank respectively. The copies of above stated letters dated 30.04.2021 are attached as Annexure R-1/2 to R-1/5 respectively.

6. That apart from the above stated letters, the relatives of the petitioners were also informed to provide same quality DVR and expenses as per the order passed by the Ld. Additional Sessions Judge. DDR No.8 dated 04.05.2021 with signatures of the relatives of the petitioners is also attached as Annexure R-1/6. The CIA Staff further made compliance of the order dated 27.04.2021 by personally serving the concerned organization/ person. DDR No.11 dated 01.05.2021 was recorded to this effect, the copy of which is attached as Annexure R-1/7.

7. That surprisingly, even after repeated asking, the petitioners/ accused did not provide necessary expenses/ same quality DVR to CIA Staff. Due to which, the CCTV footage/ DVR could not be preserved. At this stage, when the CCTV footage/ DVR could not be preserved due to the fault of petitioners/ accused, then also, the concerned police officials provided CCTV footage in pen drive to the petitioners/ relatives of petitioners. It is worth mentioning here that had it been a case that the DVR was preserved as per the orders of the court, then, there would not have been any suspicion regarding authentication of the CCTV footage annexed by the petitioners. However, when the petitioners intentionally did not get the DVR/CCTV footage preserved then it raised a doubt that the timing on the footage/photographs relied upon by the petitioners may be result of tempering.

8. That moreover, even for the sake of arguments, if the timing stated in para 6 of the petition is taken to be correct, then also, the entire timing prior to 06:00 PM on 07.04.2021 has no significance as the petitioners were apprehended at Nakabandi after 06:00 PM. As per the CCTV footage annexed by the petitioners itself, both the petitioners namely Bhupinder Singh and Balwinder Singh are not seen at any place of CIA Staff, Khanna, prior to 06:00 PM. Therefore, the allegations to the effect that the petitioners were detained OTR around 04:00 PM are proved false and are concocted one. As far as the timing stated by the petitioners prior to 06:00 PM are concerned, it is worth mentioning here that the then SSP, Khanna had called an urgent meeting at CIA Staff, Khanna to maintain law and order, city sealing and brutal offences. For the said purpose, the concerned police officers are seen in the footage. It has been alleged by the petitioners that from 07:53 PM to 08:45 PM, DSP Sh. Rajan Perminder Singh, Inspector Vinod Kumar and other police officials were roaming near the gate of CIA Staff. In this regard, it is worth mentioning here that Inspector Vinod Kumar had come to CIA Staff for once only due to technical fault in printer and had gone back immediately. As per the allegations itself, Inspector Vinod Kumar was seen till 08:45 PM, therefore, it cannot be said that ruqa at 09:20 PM cannot be sent by Inspector Vinod Kumar. It has been further wrongly alleged by petitioners that at 09:21 PM, Inspector Vinod Kumar was seen leaving CIA Staff in private vehicle make 120 bearing registration No. PB-01-B-3885. Infact, the true facts are that Inspector Vinod Kumar is nowhere seen in the footage at 09:21 PM. Rather, it has been found that the said car belongs to one Ram Singh son of Surjit Singh, resident of ward no.27, Khanna Khurd, who is working as supplier of vegetables in the mess of the office of CIA Staff. On the said date, his employee namely Dalbir Singh son of Harcharan Singh had brought vegetables in the mess of CIA Staff, Khanna. The said fact has also been verified from the statements of Ram Singh and Dalbir Singh. The copies of the statements are attached as Annexure R-1/8 & R-1/9 respectively.

13. That it is most humbly submitted that the present FIR has been rightly registered and the CCTV footage/ photos have no impact on the true facts and events of present case. The conduct of petitioners in not getting preserved the DVR/ CCTV footage as per order dated 27.04.2021 creates big doubt and suspicion on the timing of CCTV footage relied upon by the petitioners. Rather, the petitioners by not disclosing the true facts, have obtained a favorable order of interim bail, which is liable to be cancelled in view of the DIA facts stated herein above.”

Perusal of the said reply reveals that the police is trying to shift the burden on the family of the petitioners only because of non-deposit of fee. There is no evidence that anybody had contacted them to deposit the said fee. When the quantity was so massive it was duty of the police officials and investigator to ensure that CCTV footage is properly protected. A specific affidavit by the concerned SSP was filed, however in the opinion of the concerned Judge, the officers in the reply were not specific and on that reason, interim bail was granted.

4. Petitioner's counsel prays for bail by imposing any stringent conditions. The petitioner contends that the pre-trial incarceration would cause an irreversible injustice to the petitioner and family.

4. The State's counsel opposes the bail.

REASONING:

5. Thus, there would be no justification to keep this bail pending waiting for the proper investigation. The petitioner was granted interim protection, and during the interregnum, there is no allegation that he had hampered with the investigation or threaten any witness. Given the above, there would be no justification to discontinue the interim protection, and the same is made absolute subject to the petitioner complying with the terms of the bail order and the following additional conditions.

6. Within fifteen days from today, the petitioners shall forward to the Investigator/SHO and the complainant/victim(s) the complete details of bank account numbers with addresses, fixed deposits, DEMAT account numbers, the current market value of jewelry, sovereign metals, all precious articles, held either individually or jointly, and cash-in-hand. ***If the petitioners fail to comply with this condition, then on this ground alone, the bail might be canceled, and the complainant may file any such application for the cancellation of bail, and State shall file the said application.***

7. Within fifteen days from today, the petitioners shall procure a smartphone and inform its IMEI number and other details to the SHO/I.O. of the Police station mentioned before. The petitioner shall always keep the phone location/GPS on the "ON" mode. Whenever the Investigating officer asks to share the location, the petitioner shall immediately do so. The petitioner shall neither clear the location history, WhatsApp chats, calls nor format the phone without permission of the concerned SHO/I.O. This condition shall continue till the completion of the trial or closure of case, whatever is earlier.

8. Given the nature of the allegations and the other circumstances peculiar to this case, the petitioners shall surrender all weapons, firearms, ammunition, if any, along with the arms license to the concerned authority within fifteen days from today and inform the Investigator about the compliance. However, subject to the Indian Arms Act, 1959, the petitioner shall be entitled to renew and take it back in case of acquittal in this case, provided otherwise permissible in the concerned rules.

9. In return for the protection from incarceration, the Court believes that the accused shall also reciprocate through desirable behavior. ***It is clarified that in case the petitioners do not mend his ways and repeats the offence or indulge in criminal behaviour, then in all future matters, the concerned courts shall keep it as a factor that this court had afforded a final opportunity to the petitioner to reform and live a normal life but did not mend his ways.***

CRM-M-53046-2021

10. The conditions mentioned above imposed by this court are to endeavour that the accused does not repeat the offence and to ensure the safety of the witnesses, victim, and their families. In Sushila Aggarwal, (2020) 5 SCC 1, Para 92, the Constitutional Bench held that unusually, subject to the evidence produced, the Courts can impose restrictive conditions. In Sumit Mehta v. State of N.C.T. of Delhi, (2013)15 SCC 570, Para 11, Supreme Court holds that while exercising power Under Section 438 of the Code, the Court is duty-bound to strike a balance between the individual's right to personal freedom and the right of investigation of the police. While exercising utmost restraint, the Court can impose conditions countenancing its object as permissible under the law to ensure an uninterrupted and unhampered investigation. In Mohammed Zubair v. State of NCT of Delhi, Writ Petition (Criminal) No 279 of 2022, Para 29, decided on July 20, 2022, A Three-Judge bench of Hon'ble Supreme Court holds that "The bail conditions imposed by the Court must not only have a nexus to the purpose that they seek to serve but must also be proportional to the purpose of imposing them. The courts while imposing bail conditions must balance the liberty of the accused and the necessity of a fair trial. While doing so, conditions that would result in the deprivation of rights and liberties must be eschewed."

Petition allowed in aforesaid terms. All pending applications, if any, stand disposed.

Considering the massive quantity of drugs involved, this court requests the concerned trial court to make all endeavours to conclude the trial by 31.12.2023, of which the prosecution evidence be completed by 30.11.2023, and the remaining time to provide an opportunity to the accused to lead defence evidence, if so desired. It is clarified that neither the petitioner shall seek any adjournment nor try to use any tactics to delay the trial. It is further clarified that in case, the petitioners indulge in any tactics of delay the matter like filing frivolous applications under Section 311 CrPC or in any other manner tried to delay the trial, on this ground alone, it shall be permissible for the Sessions Court to cancel their bail and put them in custody and there shall be no need for the Sessions Court to send the matter to this Court for cancellation of bail. State is also directed not to seek any adjournment and in case, any officer of the State tries to seek adjournment or delay the matter, the concerned Special Judge shall take appropriate action against the State representative.

(ANOOP CHITKARA)
JUDGE

17.05.2023
anju rani

Whether speaking/reasoned: Yes
Whether reportable: No.