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

CRM-M No.46834 of 2022 (O&M)

Date of decision: 12.01.2023

Vishal Chopra @ Rocky

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Ashish Aggarwal, Advocate
for the petitioner.

Mr. Ayush Sarna, AAG, Punjab.

ARVIND SINGH SANGWAN J. (Oral)

Prayer in this 2nd petition is for grant of regular bail to the petitioner under Section 439 of the Code of Criminal Procedure (in short 'Cr.P.C.') in FIR No.105 dated 26.03.2022, registered under Sections 21, 22, 25, 27(A) of the Narcotic Drugs and Psychotropic Substances Act (in short 'the NDPS Act') (Sections 29 of the NDPS Act and Section 25 of the Arms Act added later) at Police Station Division 'B', District Police Commissionerate Amritsar City.

The earlier one was dismissed as withdrawn.

Counsel for the petitioner has argued that though the petitioner is repeatedly involved in number of cases under the NDPS Act in the same Police Station Division 'A', Amritsar, however, he has been granted the concession of anticipatory/regular bail by the Court of Sessions as per the details given in the petition itself. It is further submitted that the petitioner is being falsely implicated on account of

the personal bias of the police officials and in the present case, as per the allegations in the FIR, registered on the basis of a secret information that one Sajan Kalyan is involved in the business of selling narcotics and thereafter, the police apprehended Sawinder Kaur, mother of the aforesaid Sajan Kalyan and Priya, wife of Sajan Kalyan. It is further submitted that as per the further allegations in the FIR, 30 gms of Heroin was recovered from Sawinder Kaur and 20 gms of Heroin was recovered from Priya and later on, from the search of the house, 260 gms of Heroin was recovered from the water tank. In the first disclosure statement, the name of the petitioner was not mentioned, however, in the second disclosure statement of the co-accused Priya is that the petitioner is friend of her husband Sajan Kalyan and he is also actively involved in the narcotic business. It is also submitted that the petitioner is already in custody in some other cases and was taken on production warrants and in pursuance to his disclosure statement, no narcotics were recovered and only 06 cartridges of .32 bore along with one magazine.

Counsel for the petitioner has relied upon relies upon the order dated 01.06.2022 passed in CRM-M-22971-2022, vide which co-accused Priya, who is daughter-in-law of the petitioner, has been granted the concession of regular bail, by passing the following order: -

“Learned counsel for the petitioner submits that the petitioner is a lady, aged about 33 years, having a minor daughter aged about 06 years and has no previous history of involvement in any other case under NDPS Act. It is further submitted that as per allegations in the FIR, registered at the instance of SI Talwindr Singh, while on patrol duty, he received a secret information that Sajan Kalyan @ Daddu along with his mother Sawinder Kaur, wife Priya (petitioner) and brother-in-law Jasbir Singh @ Lalli are indulged in the business of selling heroin and are

using different vehicles for the same purpose. It is stated that if a raid is conducted at 75, Blue City, Link Road, Meerakot to Luharka Road, Police Station Kamboa, Amritsar Rural, huge quantity of heroin and drug money can be recovered. Relying upon such information, a ruqa was sent to Police Station B Division and SI Raj Mohinder Singh registered the FIR. Thereafter, in the presence of ACP, house of the petitioner along with SI Talwinder Singh and Lady Constable was searched and 30 grams of heroin was recovered from Sawinder Kaur and 20 grams of heroin was recovered from Priya (petitioner) in polythene packets. Both of them were arrested. During the investigation, the petitioner made a disclosure statement and on the basis of same, 260 grams of heroin in a polythene packet was recovered from toilet tank in the bathroom and from Sawinder Kaur, on the basis of her disclosure statement, Rs.59,000/- of drug money was also recovered and two cars i.e. Creta and Fortuner were taken in possession.

Learned counsel further submits that though as per column No.3 of the FIR, secret information was received by SI Raj Mohinder Singh at 16:10 hours on 26.03.2022 and it continued till 18:35 hours and later on, when the ruqa was sent, FIR was registered at 18:45 hours. It is also submitted that after registration of the FIR, when the raid was conducted, it was night time, therefore, the police has not followed the provisions of Section 42 of NDPS Act, which require that when a raid is to be conducted, after sunset, the police has to record grounds of belief that raid is to be conducted at that time, however, neither in the ruqa nor in the FIR, any such grounds have been recorded. It is next submitted that in fact, the police came to house of the petitioner in the morning on 26.03.2022 and this fact has been duly recorded in the CCTV, which was taken by the police, whereas in the neighbour's house, another CCTV camera is installed, from which it is clear that the police party came to house of the petitioner at around 10.00 a.m. Learned counsel has relied upon photographs of CCTV footage, showing time and date, when the police came to house of the petitioner as well as an affidavit of neighbour of the petitioner, who stated that he has installed CCTV camera in his house, which is situated next to house of petitioner Priya and on 26.03.2022 at about 10.00 a.m., the police raided house of the petitioner in Blue City area and he is in possession of

DVR and Hard Disc Drive of CCTV, which can be presented before the Court in a pen drive. It is thus argued that arrest of the petitioner at the given time in the FIR is highly doubtful and the matter needs to be inquired from some independent agency.

It is next argued that false implication of the petitioner is on account of the fact that her husband/co-accused Sajan Kalyan @ Daddu is involved in six FIRs under different provisions of NDPS Act and was not arrested at the spot, as he was not present in the house, therefore, the female members of his house i.e. his wife Priya (petitioner) and his mother Sawinder Kaur were arrested without there being any recovery. It is further submitted that even as per secret information, primary allegations are against husband of the petitioner, namely Sajan Kalyan @ Daddu that he is involved in the business of selling heroin along with family members and being wife of Sajan Kalyan @ Daddu, the petitioner has been roped in the present FIR. It is also submitted that recovery from the petitioner, even as per the police version, was 20 grams of heroin, which falls in non-commercial quantity and it will be a debatable issue whether recovery of 260 grams of heroin, subsequent to her arrest, on the basis of her disclosure statement, would amount to conscious possession or not.

Learned counsel has also submitted that even as per the police proceedings, police received the information at 16:10 hours and FIR was registered at 18:45 hours and thereafter, the police came to the house and it was after sunset, therefore, in view of the fact that the police party raided house of the petitioner late in the evening after sunset, provisions of Section 41 & 42 of NDPS Act were not complied with. It is further submitted that it is mandatory to record information in terms of Section 42 of NDPS Act and mere sending a ruqa to the police station for registration of FIR, is not proper compliance of Section 42 of NDPS Act.

*In support of his arguments, learned counsel has relied upon a **judgment dated 27.07.2018 passed by the Coordinate Bench of this Court in CRM-M-14853-2017 (Chetna Sharma Vs. State of Punjab and others)**, wherein, while relying upon the recordings in the CCTV camera, it was found that police version was not correct and certain guidelines were issued to the Director Generals of Police, Punjab, Haryana and Chandigarh to*

ensure that videography of the raids should be done when prior information is received in the police station. Learned counsel has further relied upon certain other orders passed by the Coordinate Bench, to submit that on the basis of CCTV footage, when an accused raised a point that his implication is false, bail was granted. For the sake of brevity, same are not referred to.

*Learned counsel has also relied upon a judgment of the Hon'ble Supreme Court passed in **Criminal Appeal No.530 of 2012 arising out of SLP (Crl.) No.7118 of 2010 (Arjan Singh Vs. State of Punjab)**, wherein it is observed that prosecution case is improbable, when it is stated that the police had first gone to shop of the accused and when nothing incriminating was found, he recorded the disclosure statement and recovery of some amount was effected from his house. It is further observed that in other words, the accused, by recording disclosure statement, seems to have invited and led the police to the recovery of narcotic substance, at his own instance and therefore, recovery seems to be unnatural.*

*Learned counsel has next relied upon Division Bench judgment of this Court dated 04.11.2015 passed in **CRM-M-5207-2014 (Saleem Mohd. Vs. State of Punjab)**, to submit that where no other case is registered against the accused under NDPS Act and alleged contraband was not recovered from his physical possession and it was recovery, after he was already taken in custody by the police, bail was granted. It is submitted that in the instant case, recovery from physical possession of the petitioner is only 20 grams of heroin, which is non-commercial and remaining recovery was effected, when she was in police custody subsequent to recording her own disclosure statement.*

*Learned counsel has referred to another order dated 24.07.2020 passed in **CRM-M-15530-2020 (Sagar Arora Vs. State of Punjab)**, wherein, with reference to precedents, it is held that it will be a debatable issue as to the complicity of an accused on the basis of legal parameters, whether requirement of Section 42 of NDPS Act is complied with or not, as the Gazetted Officer was not the Investigating Officer. It is submitted that in the instant case, information was sent by an official of the rank of SI to another official of rank of ASI and not to the higher police officials. It is thus submitted that first recovery from the petitioner, which is from her personal*

search, is 20 grams of heroin, whereas the second recovery, after her arrest, on the basis of disclosure statement, is 260 grams of heroin, therefore, it will be a debatable issue whether second recovery was effected by following the proper procedure. Learned counsel has lastly argued that since the petitioner is in custody for the last about 02 months; she is first offender; she is a lady, having 06 years old minor daughter, she may be granted the concession of regular bail.

Learned State counsel, on the basis of custody certificate dated 30.05.2022, has not disputed the custody of the petitioner as well as the fact that she is not involved in any other case under NDPS Act, however, it is submitted that husband of the petitioner is involved in six FIRs under NDPS Act as well as IPC. It is further submitted that neither husband of the petitioner, namely Sagar Kalyan @ Daddu nor her brother Jasbir Singh @ Lalli were present in the house, when the raid was conducted, therefore, the petitioner and her mother-in-law were arrested and aforesaid recovery was effected in presence of a Gazetted Officer.

*Learned State counsel has further submitted that the petitioner is deemed to be in possession of recovery effected from her and has relied upon a judgment of the Hon'ble Supreme Court in **Dharampal Singh Vs. State of Punjab, 2010 (4) RCR (CrL) 504**, wherein opium was recovered from dicky of the car and two accused, who were travelling in the said car, were held to be in conscious possession. A perusal of this judgment would show that the Hon'ble Supreme Court, while deciding an appeal against the judgment of conviction, on the basis of appreciation of the evidence, held that in such circumstances, both the persons, who were occupiers of the car, would be in conscious possession of the contraband, however, in the instant case, the case is still at the investigation stage and it is yet to be concluded by the prosecution whether Sagar Kalyan @ Daddu, husband of the petitioner, being head of the family, was in conscious possession of the recovery, which was effected in terms of disclosure statement of the petitioner, after her arrest, as from her personal search, only 20 grams of heroin was recovered, which falls in non-commercial quantity.”*

Counsel for the petitioner has lastly, argued that the

petitioner is in custody for the last 09 months and 13 days and the conclusion of the trial is likely to take some time.

Counsel for the State on the basis of the Custody Certificate has not disputed the factual position but opposed the prayer for bail.

Without commenting anything on merits of the case, considering the fact that even the Court of Sessions while granting anticipatory/regular bail in the earlier FIRs has taken notice that the petitioner is being involved in number of cases only on the basis of the disclosure statement of the other co-accused that too in the Police Station within the jurisdiction of District Amritsar and further in view of the fact that the petitioner is in custody for the last 09 months and 13 days; the co-accused of the petitioner are already released on bail; the custodial interrogation of the petitioner is not required and the conclusion of the trial will take some time, this petition is allowed and the petitioner is directed to be released on bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate.

However, it will be open for the prosecution to apply for cancellation of bail of the petitioner, in case he is found involved in any other case or misusing the concession of bail, in any manner.

(ARVIND SINGH SANGWAN)
JUDGE

12.01.2023

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No