

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

209

CRM-M 48945 of 2022

Date of pronouncement:11.04.2023

Baljinder Singh

.....*Petitioner*

Versus

State of Punjab

.....*Respondent*

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH.

Present: Mr. P.S. Sekhon, Advocate
for the petitioner.

Mr. Jaiteshwar S. Bhandhari, AAG, Punjab.

GURBIR SINGH, J (ORAL)

Prayer in this petition is for grant of regular bail in case FIR No.118 dated 16.11.2019, under Sections 15, 29 and 61 of NDPS Act, registered at Police Station Banur, District Patiala.

As per version of the prosecution, 150 kgs of poppy husk in six bags were recovered from the possession of the co-accused Abhilash Sharma in the truck make Ashoka Leyland bearing No.PB-65 AS 3736. No recovery is effected from the petitioner and no recovery is to be effected from the petitioner. The truck from which recovery was effected is owned by wife of the petitioner. The said truck was given on lease to Abhilash Sharma co-accused and the said truck was in actual possession of him. Copy of agreement to lease deed is annexed as Annexure P-2 and copy of affidavit of co-accused Abhilash Sharma dated 06.06.2019 is annexed as Annexure P-3. There is no other evidence collected against the petitioner except the disclosure statement. No doubt the petitioner is involved in two

CRM-M 48945 of 2022

other cases under NDPS Act. The petitioner is involved in this case only due to registration of other two cases. Petitioner surrendered before the police authorities on 07.06.2022 and since then he is in custody. Since then the medical condition of the petitioner is not good and he is suffering from Hypertension, Diabetes Mellitus and Kidney Disease. Although he was taken to Medicine Department Rajindra Hospital, Patiala for treatment but he has not been regularly taken up there for follow up. His condition is deteriorating day by day.

Custody certificate has already been filed by the learned State counsel.

Reply by way of affidavit of Manjit Singh Tiwana, PPS, Superintendent Central Jail, Patiala, on behalf of respondent-State as well as Medical Report Annexure R-1, filed in Court today. The same are taken on record.

On the other hand, learned State counsel opposed the prayer. He has fairly admitted that the petitioner in custody in this case since 10.06.2022. The petitioner could not be taken for follow up due to non-availability of Medical Guard (Police).

Heard.

The petitioner has been implicated in this case on the basis of disclosure statement made by the co-accused from whom 150 kg of poppy husk was recovered. It is held in clear terms in '*Tofan Singh Vs. State of Tamil Nadu, (2021) 4 SCC 1*', that a confessional statement recorded under Section 67 of NDPS Act will remain inadmissible in the trial of an offence under NDPS Act. There is only confessional statement of co-accused against the petitioner. No other evidence has been collected against the

petitioner by the police. Copy of affidavit of co-accused dated 06.06.2019 (Annexure P-3) shows that physical possession of the truck in question is with the co-accused on the basis of agreement (Annexure P-2). The petitioner is not the owner of the truck from where the recovery is effected but his wife is the owner. Since petitioner is nominated on the basis of disclosure statement and no recovery is effected from him, so provisions of Section 37 of NDPS Act are not attracted. The Medical Report of petitioner (Annexure R1) is as under:-

'This is to inform you regarding the Patient (UT) Baljinder Singh s/o Bhagwan Singh is in Central Jail Patiala. He is a known case of Hypertension Diabetes Mellitus Kidney Disease. He was sent to Medicine Department Rajindra Hospital, Patiala due to complaint of Numbness in both hands and feet on 04.11.2022. His Police Guard (referred) is pending as he has been referred to Rajindra Hospital many times, but due to non-availability of Medical Guard (police) his follow up is pending he is under surveillance and proper care is taken. He will be send as soon as Medical Guard is available.

Dated:17.01.2023

*sd/- 17.01.2023
Dr. Maninder Singh
Medical Officer
Central Jail Patiala'*

From the report, it can be said that the petitioner is not regularly taken to hospital for follow up due to non-availability of the police guard. Petitioner is not being provided proper medical treatment.

In view of the above, without commenting anything on the merits of the case and taking into account the fact that the petitioner is implicated on the basis of disclosure statement of the co-accused from whom 150 kg of poppy husk were recovered and in the light of 'Tofan

Singh's case (supra) besides bearing in mind that trial is not likely to be concluded in near future, in my opinion, no useful purpose would be served by detaining the petitioner behind bars any further. The petition, as such, is allowed. Petitioner is ordered to be released on bail on his furnishing bail bonds/surety bonds to the satisfaction of learned trial Court/Duty Judge, concerned.

If any attempt whatsoever is made by the petitioner to contact/threaten/intimidate any member of the complainant's family (also the family of the petitioner), the complainant/State shall be at liberty to move an application for cancellation of bail granted vide this order.

11.04.2023
jyoti3

(GURBIR SINGH)
JUDGE

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