

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

CRM-M-54130-2022

Date of decision : 25.07.2023

Ajit

....Petitioner

Versus

State of Haryana

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Deepak Kundu, Advocate for the petitioner.

Mr. A.K. Sehrawat, DAG, Haryana.

PANKAJ JAIN, J. (ORAL)

This petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case F.I.R. No.203, dated 30.07.2022 registered for the offences punishable under Sections 21/61 of Narcotic Drugs and Psychotropic Substance Act, 1985 (for short, 'the NDPS Act') at Police Station Rohtak Civil Lines, District Rohtak, Haryana.

2. As per the allegations levelled in the FIR, it has been alleged as under :

“To, the SHO Police Station Civil Line Rohtak, today I ASI along with ORP/SI Subhash 210/HNS, HC Jitendr 3/157188, EHC Yogesh 1247/ Rohtak were present at Sheela Bye Pass Chowk Rohtak in Government Bolero having No. HR-03X-4176 & color white, driver Mr. Sachin 2004/SPT to search suspicious persons and then Mukhbar Khas met and told that Ajit S/o Rajveer, resident of Bhiwani Road Meham and Sunil S/o Chand Singh, resident of Nidana District Rohtak are engaged in selling illegal drugs and even today they are standing at bus stand

Rohtak near Prem Nagar Mode for the sale of drugs, if the raid is done immediately, then they can be nabbed with drugs. As per the information, then following the rules of 42 NDPS Act, the information u/s 42 NDPS Act was sent to register to report by EHC Yogesh 1247/RTK and to inform the local officer to come present at the spot. I ASI made the fellow employee aware of the information and tried to prepare a raiding party and also to include independent witness in the raiding party but every person refused by giving one or the other reason. I ASI along with co-employees in the government car reached at bus stand Rohtak from Sheela Bai Pass Chowk, then turned towards Prem Nagar and then a car having white colour bearing No. HR-15C-0906 was stationed about 500 meters away in the street, we reached near the car and controlled the two young boys sitting in the car with the help of fellow police persons and asked their names, then the boy sitting in the driver's seat of the vehicle told his name as Ajit S/o Rajbir resident of Bhiwani road, Meham and the boy sitting in front of the vehicle's conductor seat told his name as Sunil S/o Chand Singh resident of Niwana district Rohtak. Then I ASI made aware them to my name, number and position to the two boys sitting in the car, gave a separate notice to both of them under 50 NDPS Act and gave them in writing that suspicious of Narcotic Drugs in your vehicle HR-15C-0906, so both of you and the car have to be searched. As per the NDPS Act, you have the legal right to call any Gazetted officer or Magistrate at the spot and, both of you and the vehicle can be searched in front of him/ in his/her presence and both of you give your separate reply of notice in writing. Then both Ajit and Sunil in their reply gave consent for search in the presence of the duty magistrate and he should be called at the spot. As per reply, I ASI contacted Duty Magistrate Mr. Ashish Chauhan on his mobile no. 9315609657 from my mobile no. 9588741031 and by contacting, apprised him about the situation and prayed him to reach at the spot. After some time, the Duty Magistrate Ashish Chauhan (SDO) reached at the spot. I ASI apprised him of the

situation and presented them with the notice given to Ajit and Sunil, on which the Magistrate sahib after studying the notice and reply & searching me and fellow police officials ordered to search Ajit, Sunil and the car. I ASI carried out the search of (Sunil above, Sunil was wearing the red colored caferi wherein a packet wrapped with white tape in the right pocket and Ajit, who was wearing blue color lower wherein a packet in white tape from the right pocket was recovered from both of them. Heroin was found in both the packets. Then the Heroine was weighed by arranging the electronics weight machine, the heroine recovered from the Ajit is weighed 154.80 grams and heroine recovered from Sunit is weighed 162.40 grams. The bundle was sealed by me by using my stamp SS and handed over to ORP/SI Subhash but the same was prepared by putting the heroin in different plastic jars and the weight of the heroine from Ajit with the box was 213.611 and the weight of the heroine with the plastic jar from Sunil is 221.01 grams and the duty magistrate Mr. Ashish Chauhan SDO sahib has sealed the bundle with his seal TC, after using the seal and after keeping the sample stamp. The car was searched by the ASI The photo of the RC was found on the desk board of the car and according to the same, the owner of the car is Satish S/o Virendra Singh, H.No 1313 Near Old Bus Stand Ward No. 6 Meham District Rohtak. The bundle seal stamp with sample of Heroine and the photo copy of RC and the car has been taken in police custody. On the property form, Ajit and Sunil and witness gave their own signatures and the duty magistrate sahib also verified the heroine and property form. Ajit S/o Rajveer and Sunil S/o Chand Singh both of the above have committed offence under section 21-61-85 NDPS Act by keeping in their possession 317.20 grams heroin. The complaint is sent by HC Jitendra 3/157 IRB to the police station. The compliant should be marked and the number be informed. Special report should be sent to the district magistrate and concerned official for the case. And other investigators should be sent on the spot for further investigation of the case. I ASI and my other Police

personal with accused and case property are present at the spot.”

3. Counsel for the petitioner submits that in view of the fact that separate recoveries were made that too from the individual persons of both the accused the same cannot be clubbed together to treat it commercial. It has been contended that since the alleged contraband recovered from the petitioner weighs 154.80 grams of *heroin* and the same is less than commercial quantity as notified under the NDPS Act, rigors of Section 37 will not be attracted. Counsel for the petitioner relies upon the law laid down in **Amarsingh Ramjibhai Barot vs. State of Gujrat, (2005) 7 SCC 550** and order passed by Co-ordinate Bench in **CRM-M-53872-2021** titled as **Sukhdev Singh vs. State of Punjab**, dated 27th of April, 2022 wherein bail has been extended in similar situation relying upon law laid down in *Amarsingh Ramjibhai Barot's* case (supra). It has been further contended that the petitioner is behind bars since 30th of July, 2022 and has no other criminal antecedents.

4. The aforesaid fact is not disputed by counsel for the State.

5. Without commenting on the merits of the case, keeping in view the incarceration already suffered by the petitioner and in view of law laid down in the case of *Amarsingh Ramjibhai Barot vs. State of Gujrat* (supra), the present petition is allowed. The petitioner is ordered to be released on bail on his furnishing bail bonds/surety bonds to the satisfaction of the Trial Court/Duty Magistrate concerned. However, in addition to conditions that may be imposed by the Trial Court/Duty Magistrate concerned, the

petitioner shall remain bound by the following conditions :-

- (i) The petitioner shall not mis-use the liberty granted.
- (ii) The petitioner shall not tamper with any evidence oral or documentary during the trial.
- (iii) The petitioner shall not absent himself on any date before the trial.
- (iv) The petitioner shall not commit any offence similar to the one alleged in the present case.
- (v) The petitioner shall deposit his passport, if any with the trial Court.
- (vi) The petitioner shall give his cellphone number to the police authorities and shall not change his cell-phone number without permission of the trial Court.
- (vii) The petitioner shall not in any manner try to delay the trial.

6. In case of breach of any of the aforesaid conditions and those which may be imposed by the Trial Court, the prosecution shall be at liberty to move cancellation of bail of the petitioner.

7. Needless to say that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

July 25, 2023
Dpr

(Pankaj Jain)
Judge

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