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2024:PHHC:014881

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-4218-2024
DECIDED ON: 29.01.2024

ASHU SINGH

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

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

SANDEEP MOUDGIL, J (ORAL)

1. The instant petition has been filed seeking anticipatory bail in FIR No.216, dated 18.12.2023, under Sections 21B , 25/61/85 (Later on added Section 29) of NDPS Act, registered at Police Station Kamboj, Amritsar (Annexure P-1).

2. Learned counsel for the petitioner contends that the FIR was got registered against the petitioner merely on the basis of disclosure statement of co-accused Gurjit singh. The admitted fact is that the petitioner is son of co-accused Gurjit Singh. In support of his assertion, Mr. Umesh Aggarwal, learned Advocate has referred to the relevant part of the judgment dated 17.03.2021, vide which Ajit Singh @ Jeeta was acquitted by the trial Court with the following observation:-

"18. After going through the evidence led by prosecution when seen minutely, this Court considers that there remains no reason

to disagree with the arguments advanced by Sh. Mohit Mahajan, Advocate, learned Defence counsel as to that no connection of accused with the recovered contraband could be established and even after recovery of contraband, the prosecution failed to establish any connection of accused with Heroin recovered in this case. As per prosecution story it itself, recovery has been effected on the border of Indo-Pakistan. Concededly contraband was recovered in the absence of accused.

19. In the present case, when prosecution tried to say that some persons from India side also fired upon the BSF officials/Naka party, the documents relied upon by the prosecution Ex. PY in itself makes it clear that firing was done upon Naka party from across the border only and not from the India side. Though, the present case, in Ruqa Ex.PW-3/M, it comes out that a secret information was received with regard to that Harpreet Singh alias Happy son of Gubaj Singh, Bau son of Ajit Simnigh and Ajit Singh alias Jeeta, all residents of Dauke, P.S. Gharinda, District Amritsar, are indulging in smuggling activities with connivance of Pakistan smuggler Bilal, resident of Narowal Pakistan and they all are trying to smuggle the big consignment of Heroin and Arms and ammunition across Indi-Pak border in the area of Border out Post at Dera Baba Nanak Road in the night time. If joint operation with BSF party be conducted and proper ambush may be planned then the heavy consignment of Heroin and arms and ammunition can be recovered and accused can be apprehended, but till the time of recovery even in recovery memo Ex.PW-3/A, name of Ajit Singh was not mentioned as accused. Proceedings were being carried out by I, INSPECTOR showing accused to be unknown person. In case, there should have been any secret information with the Police with regard to involvement of accused, in the recovery of this case, then, at the time of recovery, and at the time of preparing other documents, name of accused Ajit Singh alias Jeeta would have been mentioned as accused on recovery memo of Heroin Ex.PW-3/A, on recovery memo of 30 bore Pistol

Ex.PW-3/B, on recovery memo of pipe Ex. PW-3/D and on recovery memo of 18 empty packets of cloth. Meaning thereby, version of learned Defence Counsel with regard to that story with regard to secret information regarding involvement of accused is fabricated by the prosecution after recovery of Heroin and other articles in the present case proves to be sustainable.

*20. For proving guilt of accused under Section 21(c) of NDPS, Act and for other offences, prosecution was to establish that accused was found in conscious possession of contraband taken into police custody by the officials of BSF. No doubt, in view of the provisions of section 35 and 54 of NDPS, Act, once possession is found or proved then accused is presumed to be in conscious possession and if the accused takes a stand that he was not in conscious possession, he has to establish the same, but when prosecution fails to establish the possession of accused over the contraband recovered, then this presumption of accused being in conscious possession can not be taken in favour of the prosecution. In case titled as *Dharam Pal Vs State of Punjab* 2010 (4) RCR (Criminal) 504, Hon'ble Supreme Court held that to make out an offence under Section 18 of the Act, possession has to be conscious possession. It was held that initial burden of proof of possession lies on prosecution and once it is discharged only then, the burden would shift on the accused. Hon'ble Bombay High Court in case titled as *Nazma Ismail Shaikh Vs State of Maharashtra* 2001(5) BCR 407, has held that when prosecution could not prove beyond doubt that recovery was effected from accused. In such a case accused is not required to offer any explanation about possession of contraband. Presumption under Section 35 of the Act, therefore, neither arises nor is required to be rebutted by the appellant/accused. Similarly, Hon'ble Delhi High Court in case titled as "*Chand Singh and Anr. Vs The Narcotic Control Bureau and Ors.*" 2016 (1) SCC 1 held that law arises a statutory presumption of conscious possession, where physical possession of the contraband established. This is a rebuttable presumption. It*

should be for the accused to rebut the presumption of conscious possession, once the prosecution has established physical possession of the contraband.

21. Concededly, in the present case, contraband was recovered by the police officials at their own level. No link of accused Ajit Singh alias Jeeta with recovery could be established on file.

22. Further to create some link of accused with the recovered material, prosecution has tried to rely upon statement of one Karamjit Singh, before whom as per prosecution, accused Ajit Singh alias Jeeta made extra judicial confession with regard to his involvement and connection with the recovery of Heroin in the present case. As per prosecution in May, 2017 Ajit Singh accused confessed his guilt before PW-12 Karamjit Singh. Firstly, statement of Karamjit Singh under Section 161 is shown by ASI Amit Sharma who has not been examined by prosecution. Karamjit Singh appeared in witness box as PW-12. He stated that he is not knowing to Ajit Singh @ Jeeta and his statement was never recorded in this case. On his this deposition, this witness has been declared hostile and Ld. Addl. P.P. for the State was allowed to cross- examined this witness. He was thoroughly cross-examined by Ld. Addl. P.P. for the State. In the cross- examination he stated that accused Ajit Singh alias Jeeta never made any extra judicial confession before him with regard to his involvement or with regard to recovery of Heroin from the Border of Pakistan. In his cross-examination he categorically stated that never recorded any statement mark-P1 on 04.09.2017. He denied that Ajit Singh, told him that he is having any connection with Pakistani Smuggler. He also denied this fact that he ever recorded to the Police that he and Ajit Singh started drinking from thereby the shop and Ajit Singh told him that his village falls near the INDO-PAK border and he is in contact with the Pakistani Smuggler or that he is drawing the business of smuggling across the INDO-PAK border or that his son Dharminder Singh, Harpreet Singh son of Bar Singh, resident of Dauke are also indulged in activity of

INDO-PAK cross border smuggling or that they have managed one consignment from the Pakistani Smuggler in the area of Dera Baba Nanak 164 B BSF near barbed line of INDO-PAK border.

23. If seen present case was registered in the year 2015 but after recording the statement of Karamjit Singh PW-12 by showing that accused Ajit Singh made disclosure statement before him accused Ajit Singh has been involved in the present case. Report under Section 173 Cr.P.C. regarding extra judicial confession made by accused is silent. In these circumstances, by taking the benefit of some recovery of Heroin from Indo-Pak Border possibility of involving of accused cannot be ruled out.

24. When as per law, extra judicial confession without corroboration cannot be made basis for the conviction, projected case of the prosecution with regard to that accused Ajit Singh alias Jeeta made any extra judicial confession with regard to his guilt before Karamjit Singh, remained unproved on file because Karamjit Singh who was star witness with the prosecution to connect the accused with the recovery, did not support the prosecution version and categorically stated that no such judicial confession was made by Ajit Singh before him. Further to create some link of accused with the recovered material the prosecution has relied upon disclosure statement of accused Ex. PW6/A, because PW7 retired DSP Harbhajan Singh stated that on 14.11.2018 during interrogation, accused Ajit Singh alias Jeeta, made a disclosure statement Ex.PW-6/A before SI Binderjit Singh, regarding the commission of offence. With the assistance of learned Addl. P.P. for the State and learned counsel for the accused, when this disclosure statement is seen minutely, then, it can be safely said that this disclosure statement relied by the prosecution, is of no help to the prosecution."

3. Notice of motion.

4. On the asking of the Court, Mr. Ramdeep Partap Singh, Sr. DAG,

Punjab accepts notice on behalf of the respondent-State. He prays for

dismissal of the present petition stating that it is admitted fact that the petitioner has been nominated on the basis of disclosure statement of co-accused Gurjit Singh from whose conscious possession of 90 grams of Heroin was recovered, who is none else but the father of the present petitioner. He stated that the said contraband was supplied to him by the present petitioner. There is no reason disbelieve to the afore-said disclosure statement suffered by the father of the petitioner.

5. In rebuttal to the argument of learned State counsel, Mr. Umesh Aggarwal, learned counsel for the petitioner has asserted that apart from the present FIR, there is no other case pending against the petitioner.

6. To record 'finding of innocence' for granting the relief of anticipatory bail to the petitioner, this court is not called upon to record a finding of not guilty and it is only required to see if there are reasonable grounds of its belief. It does not mandate the court to enter into a domain as if it is pronouncing a judgment of acquittal and recording a finding of not guilty. Such an exercise, if conducted by the court, is likely to defeat the prosecution case even before a trial is concluded.

7. The Court is also not expected to weigh the evidence for arriving at a finding as to whether the accused has committed an offence under the NDPS Act or not. The entire exercise that the Court is expected to undertake at this stage is for the limited purpose of releasing him on bail. Thus, the focus is on the availability of "*reasonable grounds*" for believing that the accused is not guilty of the offences that he has been charged with and he is unlikely to commit an offence under the Act.

8. The Hon'ble Supreme Court elaborated the expression

“reasonable ground” in '*Customs, New Delhi v Ahmadalieva Nodira* 2004 (2) RCR (Criminal) 192 and '*State of Kerala v Rajesh* 2020 (1) RCR (Criminal) 818, which can be read as under:

“7. The limitations on granting of bail come in only when the question of granting bail arises on merits. Apart from the grant of opportunity to the Public Prosecutor, the other twin conditions which really have relevance so far as the present accused respondent is concerned, are: the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. The conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty has to be based on reasonable grounds. The expression “reasonable grounds” means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence.

[emphasis added]

21. The expression “reasonable grounds” means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence.”

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9. The statute used “three expressions” — “the court is satisfied”; “reasonable grounds”, and “believing that the accused is not guilty”, and as such, it does not restrain the Court from exercising its jurisdiction. The

requirement of recording reasons would not mean to record in writing establishing that an accused is innocent'. Hence it is the subjective satisfaction of the court based on an objective assessment of the material brought before it for giving a reasonable ground to sustain a belief.

10. As strongly asserted by the learned State counsel there is sufficient and cogent evidence which is sufficient for this court to draw an inference that there are reasonable grounds to believe the petitioner's active and regular involvement is drug peddling.

11. This Court is also obvious of the prevailing circumstance, wherein drug abuse is a social malady. While drug addiction eats into the vitals of the society, drug trafficking not only eats into the vitals of the economy of a country, but to the economy of the State/country by generating illicit money.

12. The drug peddlers have successfully destroyed not only the social fabric of the society but finishing the youth, who are future generation of the country. Such accused need to be dealt with firmly and sternly with no sympathy to be shown to them particularly in the case in hand, wherein the petitioner is involved in smuggling of dangerous contraband at the international borders.

13. Considering the afore-said aspect and the intensity of the allegations wherein, a father himself has specifically named his son, though the quantity of total contraband i.e. 150 grams Heroin, which falls under non-commercial quantity but in any case the petitioner who is a young boy and is involved in such like activities, this Court deems it appropriate that in the case in hand the custodial interrogation of the petitioner is required for the recovery

of the contraband which he is in possession and the source thereof.

14. In view of the discussions made hereinabove, this Court is of the view that the petitioner does not deserve the concession of anticipatory bail. Thus, the present petition is dismissed having no merits.

29.01.2024

Sham

(SANDEEP MOUDGIL)
JUDGE

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