

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-8002-2024
DECIDED ON: 15.02.2024

SANDEEP SINGH

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. D.S. Virk, Advocate
for the petitioner.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court has been invoked for the 2nd time under Section 438 Cr.P.C., seeking anticipatory bail to the petitioner in FIR No.371 dated 21.11.2023, under Sections 15(C), 18(C), 27-A and 29 of NDPS Act, 1985 and Section 420 of IPC, registered at Police Station Sadar Kaithal, District Kaithal.
2. The factual matrix leading to the filing of the present petition as narrated in the FIR reads as under:-

“To the SHO PS Sadar, Kaithal, Jai Hind, It is requested that today on 21.11.2023, I along with SI Ranjit Singh No.105/KTL, ASI Parveen Kumar No.43/KTL, HC Rajeev Kumar No.279/KTL, HC Jasmer Singh No.469/KTL and EHC Lakhwinder Singh No.420/KTL were present at village Geong-village Kathwarh turn point Hisar to Chandigarh Bypass road, Kaithal in connection w.r.t. stop the crime on Govt. vehicle bearing No.HR-08GV-5926 driven by EHC Balinder Singh No.961/KTL, a special informer came on motorcycle from Titram side and gave me secret information that Palvinder Singh alias Goldi S/o

Shamsher Singh R/o village Mandwal, who is a truck driver, and is doing the business of selling the intoxicant substance i.e. poppy husk and opium in his truck, who has made drug addict the young boys of nearby areas, due to which, the young boys are committing theft and other crimes for fulfillment of their lust for drugs. The above mentioned Palvinder Singh alias Goldi is about to come from Narwana side in his container bearing No.RJ-14GN-3419 having poppy husk and opium from some outside place for selling the same in village Mandwal and nearby areas, if a Naka be laid down at this place and the suspected vehicles be checked, the above mentioned Palvinder Singh alias Goldi can be apprehended along with poppy husk and opium. As the information has been given by a believable person, a notice u/s 42 of NDPS Act was prepared at 2:15 a.m. and the same is sent to you the S.H.O. P.S. Sadar, Kaithal through EHC Balinder Singh No.961/KTL. The secret informer went from the spot, after giving the information. Thereafter, I disclosed w.r.t. the secret information to the other police officials and prepared a raiding party and started baricating at turn point of village Geong-Kathwarh on Hisar-Chandigarh By-pass road, Kaithal and I sent S.I. Ranjit Singh to call Karamvir Singh, Sarpanch of village Geong at the spot. After checking 4-5 trucks, who were coming from Titram side, as per the secret information, at about 2:45 a.m., we saw one container coming towards us from Narwana side, to whom I along with other police officials while barigating. signaled him with the light of torch to stop the vehicle, the driver of the vehicle stopped all of a sudden and alighted from the vehicle and tried to ran away, I along with other police officials apprehended him and on asking, he told his name as Palvinder Singh alias Goldi S/o Shamsher Singh R/o village Mandwal, P.S. Rajound, District Kaithal. On checking the vehicle is found to be bearing No.RJ-14GN-3419, make Ashoka Lyland as per the secret information. Then I told Palvinder Singh alias Goldi that I have suspicion that you are having some intoxicant substance i.e. poppy husk and opium with you and in your vehicle and you have a legal

right to get conduct the search of yourself and your vehicle from any Magistrate or gazetted officer. I prepared notice u/s 50 of NDPS Act separately, upon which, suspected Palvinder Singh alias Goldi and witnesses signed on the same. After thinking for some time, he expressed his consent to get conducted the search of himself and his vehicle from some Magistrate. I prepared consent memo u/s 50 of NDPS Act, upon which Palvinder Singh alias Goldi and witnesses had signed. On 3.19 a.m., I called from my mobile No.70155-45006 to Sh.Ashish Kumar, Naib Tehsildar, Kaithal on his mobile No.7988917708 and after explaining the facts, requested him to come on the spot. At about 3.25 a.m., EHC Balinder Singh came back at the spot, after giving the notice u/s 42 of NDPS Act to SHO, P.S. Sadar, Kaithal. At about 3.35 a.m., Sh.Ashish Kumar, Naib Tehsildar, Kaithal came at the spot in his private vehicle bearing No.HR-08GV-2222, while driving the same on his own. During this, A.S.I. Ranjeet Singh came back and told that Sarpanch Karamvir Singh S/o Balwan r/o village Geong has not met at his house as he has gone out of station due to some personal work. Sh.Ashish Kumar, Naib Tehsildar, Kaithal enquired from the suspected Palvinder Singh alias Goldi and witnesses along with me. As per the directions of Sh.Ashish Kumar, Naib Tehsildar, Kaithal, I got conducted my search from ASI Parveen Kumar and no suspected thing was recovered from me apart from the mandatory items. I prepared my personal search memo, upon which, the witnesses had appended their signatures. Sh.Ashish Kumar, Naib Tehsildar, Kaithal attested the memo and make 'SEEN' the notice u / s * 50 of NDPS Act. In the meantime, Satish S/o Phool Chand R/o Geong, driver of Pick-up came from village Geong side and Birbal S / O Ram Niwas along with Sahil S / o Birbal r/o village Dhons came on motorcycle bearing No.HR-09B1-1602 from village Dhons side, to whom I disclosed the facts and asked them to become the witnesses, but they told their genuine difficulties and went away from the spot. Then as per the directions of Sh.Ashish Kumar, Naib Tehsildar, Kaithal, during the search of truck container bearing No.RJ-14GN-3419,

Lyland, red colour, used by above mentioned Palvinder Singh alias Goldi, I opened four bulb type bolts on the roof in the cabin and I found a black coloured substance in a black coloured polythene bag and on checking, I found the opium i.e. intoxicant substance restricted by the Government. On weighing with the electronic weighing machine, the same is found 500 grams along with the polythene bag. I put the same in a plastic box and prepared a parcel of opium and served the same with my seal PK/2 and prepared sample seal separately as 'PK/1'. After use, I handed over my seal to HC Rajeev Kumar. Thereafter, driver Palvinder took out his driving licence from dashboard of the truck, which is in the name of Palvinder and the same is issued by RTA, Kaithal, valid upto 14.07.2029, photocopy of RC No.RJ- 14GN-3419, truck make Ashoka Lyland, upon which, the chassis No.MB1A5EHD6MADL6189 and engine No.MHPJ110497 has been written. This RC is in the name of above mentioned Palvinder Singh and the same has been issued by RC DTO, Jagatpura authority and registration date is 10.11.2021. Form 47, Form RS 5.16, 3 pages of above mentioned vehicle, fitness certificate 1 page, copy of insurance by United India 3 pages, paper of billity Le. Globe Eco Logistic Pvt. Ltd., State Maharashtra, GST No.27AAACG3938JIZG bearing No.167316, dated 17.11.2023, upon which it has been written (From Rajasthan to Chandigarh, Consigner, Name MSK Flex India Pvt. Ltd., F19TP 2427 MJDC, Ranjangaon, vill. Koregaon The Shirur Pune, MH, consignee name M / s Delta Enterprises, Plot No.72, Makhan Majra, Chandigarh, packages 243 Micro Cellular, 15 rubber etc, upon which, the vehicle No.RJ-14GN-3419, invoice No.232401881, dated 17.11.2023 and Mob. No.98150-91513, 97802-48378 etc has been written two pages and 14 paegs of taxes invoice K Flex, 1 page of e-Way bill. The number of above mentioned vehicle is mentioned on some of the documents. Thereafter, I checked body of the truck with the help of other police officials and found packing of cardboard and packing of plastic polythene as per the billity foam, rubber etc. On the packing of cardboard, K Flex EC has been written.

We also found black coloured heavy bags with the packing of foam and on checking, after opening the same, I found Doda Post in 24 bags and poppy husk in 34 bags. On weighing with the electronic weighing machine, every bag was found 20-20 kg. out of above mentioned 24 bags of Doda Post and therefore, total 480 Kg of Doda post was recovered. Then, on weighing with the electronic weighing machine, every bag was found 30-30 kg, out of above mentioned 34 bags of Poppy husk and therefore, total 1020 Kg of poppy husk was recovered. Then we marked A1 to A24 the plastic bags of Doda Post and B1 to B34 to bags of the poppy husk. Then I prepared parcels of bags of Doda Post and Poppy husk recovered from the possession of above mentioned Palvinder Singh alias Goldi and served with my seal ^ prime PK / (2') after taking the same from HC Rajeev Kumar and prepared sample seal separately of all the parcels and then served every sample seal with my seal ? K / (1') After use, I handed over the seal to HC Rajeev Kumar. Thereafter, Sh.Ashish Kumar, Naib Tehsildar, Kaithal served with his seal prime SS / 1 / (1') on one parcel of opium, 24 parcels of Doda Post, 34 parcels of poppy husk and sample seal of opium, Doda Post and 59 sample seal of poppy husk. After use, Sh.Ashish Kumar, Naib Tehsildar, Kaithal has kept his seal with him and he attested all the parcels and sample seals. Thereafter, parcel of opium, Doda Post, Chura Post, sample seals and above mentioned truck alongwith 24 pages as evidence were taken into police custody through recovery memo. I prepared recovery memo. The accused and witnesses signed on the same and Sh.Ashish Kumar, Naib Tehsildar, Kaithal attested the same. After giving me proper directions, Sh.Ashish Kumar, Naib Tehsildar, Kaithal went away from the spot at 8:15 a.m. in his vehicle. As accused Palvinder Singh alias Goldi has committed offences u / s 18(C) of NDPS Act by keeping intoxicant substance of 500 grams of opium and u / s 15(C) of NDPS Act by keeping intoxicant substance of 480 kg of Doda Post and 1020 KG poppy husk, total 1500 kg (15 quintals), therefore, a ruqa is written and sent to the police station sadar, Kaithal through EHC Balinder

Singh No.961/KTL. After registration of a case, number of the same may kindly be informed to me. Special reports may kindly be sent to the higher police officials through proper channel. Another investigation officer may kindly be sent at the spot for further investigation. I along with other police officials and accused Palvinder Singh alias Goldi along with case property is present at the spot. Sd/- ASI Pardeep Kumar, No.56/KTL, Special Detective Unit, Kaithal, dated 21.11.2023 at 8.25 a.m”

3. The case set up by the petitioner is that he has been nominated on the basis of disclosure statement suffered by the co-accused namely Palwinder Singh @ Goldi, from whom 15 quintals of *poppy husk* was recovered, alleging that out of the total contraband recovered, 2 quintals *poppy husk* was to be delivered to the petitioner, which is totally false and vague allegation and without any cogent evidence.

4. Notice of motion.

5. On the asking of Court, Mr. Gurbir Singh Dhillon, AAG Haryana accepts notice on behalf of respondent-State, who informs the Court that no doubt 15 quintals of *poppy husk* alongwith 500 grams of opium was recovered from the conscious possession of co-accused Palvinder Singh @ Goldi out of which 2 quintals of *poppy husk* was to be delivered to the present petitioner. It is argued that as per CDR 40 calls were exchanged between the petitioner and the co-accused and petitioner is also involved in one another case under NDPS Act registered in the State of Madhya Pradesh, meaning thereby he is a habitual offender and is actively participated in the commissioning of offence, therefore, his custodial interrogation is required to ascertain as to where the said 2 quintal of the contraband were further to be supplied.

6. Heard learned counsel for both the parties.

7. As per the allegations, a huge quantity of contraband i.e., 15 quintals of *poppy husk* alongwith 500 grams of opium was recovered from the conscious possession of co-accused Palvinder Singh @ Goldi out of which 2 quintals of poppy husk was to be delivered to the present petitioner. The contention of the petitioner with regard to the fact that nothing has been recovered from him is of no help as the co-accused Palvinder Singh @ Goldi has suffered a disclosure statement alleging that out of the total contraband 2 quintals of poppy husk was to be delivered to him and as per the CDR there were 40 calls exchanged between the brother of the petitioner and the co-accused, which is sufficient for this Court to infer that the co-accused person including the present petitioner seems to have a nexus in purchase of the contraband and to supply the same in the State of Haryana.

8. The drug menace in both the States is writ large and large number of youth are falling prey at the hands of such mafia. The role of the petitioner is not that of law abiding citizen as is evident from the record before this Court. With deep concern it is of utmost importance at this stage to say that clandestine smuggling of narcotics drugs and psychotropic substance has led to drug addiction among a sizeable section of the public. It has to be borne in mind that in a murder case the accused commits murder of one or two persons, while those persons who are dealing in a narcotic drugs are instrumental in causing death or inflicting death blow to a number of innocent young victims, who are vulnerable; it causes deleterious effects and a deadly impact on the society; they are a hazard to the society; even if they are released temporarily, in all probability, they would continue their nefarious activities of trafficking and/or dealing in intoxicants clandestinely obviously for large stake and easy illegal profit making mode. In the present prevailing scenario,

the drug trafficking, trading and its use has acquired dimensions of an epidemic which not only effects the economic policies of the State but corrupts the system apart from leaving the impact of producing sick society. I will not be shy of saying that anti drug justice is a criminal dimension of social justice as drug addiction forms vitals of the society alongwith illicit money generation by drug trafficking.

9. In fact, the jurisdiction of the Court to grant bail is circumscribed by the provision of Section 37 of NDPS Act specifically observing that bail can be granted only if reasonable grounds are there to believe the innocence of the accused added with the fact that he is not likely to commit any offence while on bail. The mandate as envisaged under section 37 of the NDPS Act needs to be followed which reads as under:

[37. Offences to be cognizable and non-bailable.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),— (a) every offence punishable under this Act shall be cognizable; (b) no person accused of an offence punishable for 3 [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.]

10. Going a step further it is negative burden casted on the petitioner to disapprove the case of prosecution as per the mandate of Section 37 of the NDPS Act which discloses that the offences are cognizable and non-bailable.

11. Other than the aforesaid discussion it is Section 35 of NDPS Act which raises a presumption of culpable mental state of mind for which no explanation is forthcoming from the petitioner in this regard. Section 35 of NDPS Act reads as under:

“35. Presumption of culpable mental state.—(1) In any prosecution for an offence under this Act which requires a culpable mental state of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation.—In this section “culpable mental state” includes intention motive, knowledge of a fact and belief in, or reason to believe, a fact.

(2) For the purpose of this section , a fact is said to be proved only when the court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of probability.”

12. At this juncture, there is no material evidence to establish innocence of the petitioner-accused as such, the question of admitting him on bail does not arise at all.

13. Though, there is no question or doubt to the recovery effected i.e., 15 quintals of poppy husk alongwith 500 grams of opium, which is alleged to have been planted, but this Court has no reason to believe this argument, as such huge

quantity by no stretch of imagination can be a case of false implication and of a planted recovery in any manner.

14. In the light of above, considering the huge quantity of the contraband and the manner in which the *modus operandi* is evident, wherein the petitioner is actively involved being a consignee of the said contraband, this petition deserves to be dismissed having no merits. Hence, the same stands dismissed with no order as to costs.

15.02.2024

Sham

(SANDEEP MOUDGIL)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>