

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-8439-2024
Date of Decision:27.02.2024

Gagandeep Singh @ Raja ...Petitioner

vs.

State of Punjab ...Respondent

Coram : Hon’ble Mr. Justice N.S.Shekhawat

Present : Mr. Parteek Pandit, Advocate
for the petitioner.

Mr. Shiva Khurmi,AAG, Punjab.

N.S.Shekhawat J. (Oral)

1. At the very outset, learned counsel for the petitioner submits that the offence under Section 27-A of the NDPS Act has not been mentioned in the head note as well as prayer clause of the present petition. The Registry of this Court is directed to carry out the necessary correction in this regard.
2. The petitioner has filed the present petition under Section 439 Cr.PC with a prayer to grant regular bail to him in case FIR No. 99 dated 14.11.2023, registered under Sections 21,27-A,27-B,29 of NDPS Act (offence under Section 27-B, 29 of NDPS Act added later on), Police Station Sekhwan, District Gurdaspur.
3. The FIR in the present case was registered on the basis of the statement made by ASI Hardeep Singh and the same has been reproduced below:-

“SHO P.S. Sekhwan Jal Hind. Today I ASI alongwith ASI Kartar Singh 1989/Batala, ASI Lakhwinder Singh 3317/Batala, PHG Tarsem Masih 2130 on government vehicle bearing No. PB-06-AK-1611 whose driver was PHG Gurmeet Singh 1406 were on patrolling and search of bad persons and were going from P.S. Sekhwan towards villages Kot Budha, Dehriwal Tattle, Razada etc. When the police party was a little behind the bridge over stream at Tattla near Gurudwara village Tattla then from the side of Razada one clean shaven young person was seen coming on foot who on seeing the police party became nervous and tried to turn back and from the right side pocket of his Pyjama worn by him took out a transparent polythene bag and tried to throw the same on the road but I ASI with the help of fellow officials apprehended him and inquired his name and address. He disclosed his name as Gagandeep Singh @ Raja son of Jaswant Singh R/o Razada. Before checking the polythene bag held by him in his right hand effort was made to associate a public witness but everyone expressed their difficulty and did not join the police party. Thereupon I ASI checked the polythene bag about to be thrown by the accused and same was found to contain Heroin. The Heroin was weighed with computerized weighing scale and was found to be 40 grams including the weight of the bag. I ASI put the 40 grams Heroin alongwith bag recovered from Gagandeep Singh in a plastic container and parcel was prepared. The parcel was sealed with my seal HS. Sample seal was separately prepared. Seal after use was handed over to ASI Kartar Singh 1989/Btl. The parcel of 40 grams Heroin was taken into police possession vide separate recovery memo. Thereafter, I ASI told the accused that there is suspicion that he has some other intoxicant substance and your personal search is to be conducted. But you have legal right to get your search conducted from some Gazetted officer or some Magistrate. Thereupon Gagandeep Singh stated that I only had this Heroin which you have recovered. Apart from this I do not have any other intoxicant substance and you can conduct my search. Thereupon the separate consent Memo of Gagandeep Singh was prepared. Upon search of accused Gagandeep Singh from the right side pocket of his pyjama one I-phone was recovered and from the left side pocket one computerized weighing scale and Rs. 1,29,400/- Indian currency was recovered. Apart from this no intoxicant substance was found. The I-phone,

weighing scale and Rs. 1,29,400/- Indian currency were taken into police possession vide separate memo. Accused Gagandeep Singh @ Raja son of Jaswant Singh by keeping in his possession 40 grams Heroin has committed offence U/s 21, 61, 85 of NDPS Act. Ruka is being sent through PHG Tarsem Masih 2130 to P.S. for registration of case. Number of the case be informed. Control room be informed through wireless. Special reports be issued and sent to Ilaqa Magistrate and concerned officers. I ASI am busy with investigation at the spot. sd/- Hardeep Singh ASI P.S. Sekhwan dated 14.11.2023. Today in the area of village Tattla at 9:15 PM.

4. Learned counsel for the petitioner contends that the police had wrongly shown the recovery of 40 grams of heroin and Rs.1,29,400 from the present petitioner. He further submits that the alleged recovery of contraband is non-commercial in nature. Learned counsel further submits that the mandatory provisions of Section 50,52-A, 57 of NDPS Act, regarding the search and seizure have not been complied in the present case. Further, the petitioner was arrested in the present case on 14.11.2023 and the provisions of Section 37 of the NDPS Act would not apply in the present case. Learned counsel next contends that the offence under Section 27-A of the NDPS Act has been wrongly added in the present case. Learned counsel has further placed reliance on the law laid down by the Hon'ble Supreme Court in the matter of **State of West Bengal Vs. Rakesh Singh @ Rakesh Kumar Singh (SC), 2022 (4) RCR (Criminal) 299**, whereby the Hon'ble Supreme Court held as follows:-

16.4 Hence, suffice it to observe for the present purpose that in the given set of facts and circumstances, the High Court has rightly found that applicability of Section 27A NDPS Act is seriously questionable in this case. That being the position; and there being otherwise no recovery from the respondent and the quantity in question being also intermediate quantity, the rigours of Section 37 NDPS Act do not apply to the present case.

17. After the discussion aforesaid, we are constrained to reiterate that the High Court has dealt with this part of the matter without much elaboration and rightly so, for only the prayer of bail being under consideration. However, we have considered it appropriate to delve farther in the matter in view of the submissions made and material presented before us. In any case, for what has been discussed herein above, the result precisely remains the same as indicated by the High Court, that diametrically opposite case in the charge-sheet than that alleged in FIR gives rise to serious doubt on the veracity of the prosecution case against the respondent. In this view of the matter, the other part of submissions and reference to the cases of Md. Nawaz Khan and Rhea Chakraborty (supra) do not require much elaboration. As aforesaid, when the case against the respondent of getting the contraband planted in the vehicle in question is prima facie disbelieved because of material available on record, the questions concerning possession of contraband, its quantity or financing are all rendered redundant. In this view of the matter, reference to the other pieces of supporting evidence like the alleged statements of the said Md. Nasir Khan and Nishat Alam @ Ruman Khan as also the alleged CCTV footage and call data records cannot provide sustenance to the prosecution case against the respondent, at least at this stage.

18. The other segment of the relevant aspects of this case pertains to the conduct of the respondent. In this regard, a few noticeable facts and factors against him could be summarised thus: he has been involved in as many as 53 criminal cases and had been convicted in two of them; there had been several allegations against him of threatening the Investigating Officers and public servants from time to time; even in the present case too, he had allegedly threatened and misbehaved with the police officers and has been charge-sheeted for offences under Sections 353 and 506 IPC; and on 23.02.2021, he did not appear before the Investigating Officer even after dismissal of his writ petition by the High Court and was arrested at a faraway place. These facts and factors, prima facie, give rise to the question as to whether the respondent was entitled to be granted the indulgence of bail. The High Court has taken the view that, prima facie, the respondent might not have committed the offence he has been charged with in this case; and, looking to his past history, there was nothing on record to suggest that he was likely to commit an offence under the NDPS Act while on bail. The High Court has, in the totality of circumstances, taken the view that the respondent was entitled for

bail on stringent conditions and has imposed additional conditions as noticed hereinbefore.

5. On the other hand learned State counsel has vehemently opposed the submissions made by learned counsel for the petitioner on the ground that serious allegations have been levelled against the present petitioner and does not deserve the concession of bail by this Court.
6. I have heard the learned counsel for the parties and perused the record carefully.
7. From the facts of the case, it is apparent that the quantity of the contraband, which was allegedly recovered from the present petitioner is non-commercial in nature. Apart from that, the applicability of the provisions of Section 27-A of the NDPS Act would be debatable in the peculiar facts and circumstances of the present case.
8. Thus, without commenting on the merits of the case, the present petition is allowed. The petitioner is ordered to be released on bail pending trial on his furnishing bail bonds and surety to the satisfaction of the concerned trial Court/ Duty Magistrate/Chief Judicial Magistrate.

27.02.2024
hitesh

(N.S.SHEKHAWAT)
JUDGE

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