

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-14867-2024

Date of Decision: 03.04.2024

Manpreet Singh

... Petitioner

VS.

State of Punjab

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Gaurav Goel, Advocate for the petitioner

Mr. Prabhdeep Singh Bhandari, AAG Punjab

Sandeep Moudgil, J. (Oral)

1. This is a petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case FIR No.197 dated 16.11.2021 under Sections 15 & 29 of NDPS Act and Sections 192 & 207 of Motor Vehicles Act, 1988, registered at Police Station STF, Phase-4, District SAS Nagar. The relevant portion of the FIR is reproduced as under:-

***“FIR No. 15.10.11.2021 Under Sections 15 of NDPS Act, 1985
Police Station Special Task Force District STF Wing***

*Copy of ruqa, SHO, P.S. STF, Phase-4, SAS Nagar, Jai Hind.
Today, I, IS alongwith Assistant SHO Jasvir Singh 512/Insp.,
Constable Sukhveer Singh 1732/Sangrur, SC Tajinder Singh
36/Sangrur, SC Amandeep Singh 1805/Sangrur by Government
vehicle no. PB-65-AN-6791, Bolero Camper, driven by Sepoy
Jagdish Kumar 3644/Patiala alongwith laptop, printer and
inverter, big battery in relation to checking of drug smuggler
were present at RD460 Khanori and at about 3:00 p.m., secret
informer informed me that Beant Singh son of Gurmeet Singh,
resident of Kalwanu, P.S. Ghagga, District Patiala, Avtar Singh
@ Tari son of Harnek Singh, resident of Manak Majra, Police*

Station Amargarh, District Malerkotla, Manpreet Singh son of Tarsem Singh, resident of Samora, Police Station Dirba, District Sangrur, Balbir Singh son of Mahender Singh, resident of Naraingarh, P.S. Sadar Khanna, District Ludhiana, are doing business of selling poppy husk after bringing from other states. Today also carrying in truck no. HR-65- 9507 Marka Bharat Benz having poppy husk in huge quantity going towards Patran via Jind, Narwana Khanori, Truck is driven by Avtar Singh @ Tari and with him Beant Singh is sitting in truck and one car no. HR- 41-J-2324 Marka KWID white color, piloting the truck. If immediately nakabandi be done in planned manner then they will be apprehended with huge quantity of poppy husk. Information is believable and trustworthy. Beant, Avtar Singh, Manpreet Singh and Balbir Singh abovesaid in connivance with each other bring poppy husk in huge quantity from other states and sell in Punjab and therefore committed offence under Section 15 of NDPS Act. Ruqa for registering case against Beant Singh son of Gurmeet Singh, resident of Kalwanu, P.S. Ghagga, District Patiala, Avtar Singh @ Tari son of Harnek Singh, resident of Manak Majra, Police Station Amargarh, District Malerkotla, Manpreet Singh son of Tarsem Singh, resident of Samora, Police Station Dirba, District Sangrur, Balbir Singh son of Mahender Singh, resident of Naraingarh, P.S. Sadar Khanna, District Ludhiana by Senior Sepoy Amandeep Singh 1805/Sangrur. Case be registered, number be informed.”

2. Learned counsel for the petitioner has contended that the prosecution has failed to connect the petitioner by way of any cogent evidence as to how he is involved in the present case where a recovery of a huge quantity of poppy husk weighing 1600 kgs. was effected from a truck bearing registration No. HR-65-9507 whereas nothing has been recovered from the car bearing registration No. HR-41-J-2324 which was being driven

by the petitioner. The assertion is that neither the warrants/authorization was obtained nor any “grounds of belief” were recorded as to why warrants/authorization could not be obtained prior to conducting the raid to conduct the search of the truck and the car after sunset, which is clear violation of Section 42 of NDPS Act.

3. Learned State counsel has opposed the prayer made in the present petition on the ground that the petitioner was driving the car, which belongs to one Beant Singh who was sitting beside the driver in the truck and is actually brother-in-law of Chamkaur Singh, owner of the KWID car, which was being driven by the petitioner, therefore, there is direct connection between the petitioner and Chamkaur Singh, and the truck was being escorted by the petitioner wherein there was a huge quantity of poppy husk. He has placed on record custody certificate dated 02.04.2024 which is taken on record, in terms whereof, the petitioner has undergone 2 years 4 months 12 days of custody

4. At earlier point of time, this Court rejected the bail petition of the petitioner i.e. CRM-M-14765-2023 vide order dated 28.03.2023. This is the second regular bail application filed on the ground that the petitioner is in custody since more than 2 years 4 months and that the trial is proceeding at snail’s pace. Reliance has been placed on **Dheeraj Kumar Shukla vs. State of Uttar Pradesh SLP (Crl.) No.6690 of 2022** which dealt with the issue pertaining to delay in trial vis-à-vis bar contained under Section 37 of the NDPS Act.

5. Heard learned counsel for the parties and gone through the record.

6. The drug menace in the State of Punjab 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. It is of utmost importance at this stage to consider the clandestine smuggling of narcotics drugs and psychotropic substance which has led to drug addiction among a sizeable section of the public, particularly the adolescence and students of both sexes. The menace has assumed serious and alarming proportions in recent times. It has to be borne in mind that in a murder case the accused commits murder of one or two persons, while those who are dealing in narcotic drugs are instrumental in causing death or inflicting death blow to a number of innocent young victims, who are vulnerable leaning deleterious effects and a deadly impact on the society and 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.

7. 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 subsection (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.]”

8. 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. 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.”

Having heard the learned counsel and examining the facts and circumstances 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, as 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.

9. In view of the afore-said facts and circumstances as also the total custody period of the petitioner, apart from the fact that a huge quantity of poppy husk has been recovered from the truck, which cannot be deemed to have been planted falsely to implicate the petitioner, no ground for granting the concession of regular bail is made out. As far as the contention of learned counsel for the petitioner with regard to non-compliance of Section 42 of NDPS Act is concerned, it cannot be taken into account while considering the

case for regular bail which is matter of trial to be adjudicated upon and may be a handle for seeking acquittal in case there is any loophole in the prosecution story but before this Court at this stage the fact remains that 1660 Kgs of poppy husk was recovered from the truck, which is of commercial in nature and huge in quantity and that the owner of the truck was also apprehended along with the petitioner from the same car at the spot itself while they were escorting the offending truck. In view of these aspects, the petitioner does not deserve the concession of regular bail, as such the present petition stands dismissed being devoid of any merit.

10. As discussed hereinabove and looking into the cogent material before this Court, I am of the considered view that the petitioner does not deserve the concession of bail at this stage wherein FSL report is awaited.

11. Hence, the present petition stands dismissed with no order as to costs.

12. However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

03.04.2024
V.Vishal

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

(Sandeep Moudgil)
Judge

- Yes/No
- Yes/No