

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

223

CRM-M-21216-2023 (O&M)
Date of decision: 22.02.2024

Gurpreet Singh @ Pannu

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. S.S. Maini, Advocate
for the petitioner.

Mr. Amit Rana, Sr. DAG, Punjab.

MANJARI NEHRU KAUL, J. (ORAL)

1. The petitioner is seeking the concession of bail under Section 439 of the Cr.P.C. in case FIR No.85 dated 04.04.2021 under Sections 22(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act') (Section 29 of the NDPS Act added lateron) registered at Police Station City Faridkot, District Faridkot.

2. Before proceeding further, it would be apposite to reproduce the relevant portion of the FIR hereinbelow:-

“SHO Police station City Faridkdor, "Jai Hind, Today I, ASI, was present in the police station and then MHC Parkash Singh 99/ Faridkot get me note down that at around 4.05. P.M., A.S.I. (L.R.) Harbans Lal number 7/Faridkot ANTI NARCOTIC CELL FARIDKot, from his official Mobile Phone Number 98724-003363 gave the information on the official Number 7527-17031 that he along with A.S.I. (L.R.) Swarn Singh 146/ Faridkot, Constable Rupinderjit Singh 70/Faridkot along with the conveyance of the private car bearing Number H.R.-22-E-2707, which is being driven by .S.I. (L.R.) Swarn Singh, after conducting the patrolling duty and after the checking of the suspicious persons, after installing the barricading, we were returning from Arraiyan Wala Road, Pipli to Faridkot and then it may be at around 3.55 P.M. and when

the police party reached at Pull Somnala, near Deh Care Centre, Faridkot and then saw two Mullan Fashion young men, catching the Momi envelope in their hands, seen arriving from the left side on the Pattri (track) of Somnala and the stopping the vehicle, getting down from the vehicle colleague employees and then both Mullan fashion young men, looking the police party, they were about to turn back side suddenly at once and then nabbing them with the help of the colleague employees, they are kept stopped. There is the doubt of having any intoxicant substance in the Momi envelop caught in their hands, whereupon, I, S.I. along with AI (L.R.) Manjit Singh 515/Faridkot, taking with us the investigating bag, private lap top and the printer, invert search light, with the conveyance of the private car of myself own bearing Number P.B.-56-B-1144, driving the car personally by me, reached on the spot and there are A.S.I. ASI (L.R.) Harbans Lal 7/Faridkot along with the above said police party, along with two Mullan Fashion young men, those which had caught the black color Momi envelopes in their hands, found standing them, ASI (L.R.) Harbans Lal intimated the facts of the case to me. I, S.I. requested to the persons crossing from there, for joining the police party but everyone showing the helplessness of their own works, went from the spot, then S.I. asked the names and the addresses to the young men duly nabbed turn by turn, in the presence of the colleague employees available on the spot, the person wearing the T-shirt color Gajri (Pink) told his name Sukhwant Singh alias Sukha son of Gurdas Singh son of Kaka Singh resident of Rajewala. I, S.I. told to Sukhwant Singh alias Sukha that I am Sikander Singh rank Sub Inspector, and I am posted as investigation officer in Punjab Police in the police station City Faridkot. I have the doubt of having any intoxicant substance in the Momi envelope caught in your right hand and with you but you have the legal right that you can get the search conducted of the Mimi envelope caught in your right hand by any Magistrate Sahib or by any Gazette Officer, which will be called on the spot without and delay or you can be taken to them. Thinking for a while, Sukhwant Singh alias Sukha that I want to conduct the search of the Momi envelope caught in my hand and of my own through any Gazette officer or by any Magistrate Sahib, upon which typing the notice, taken its print, on which Sukhwant Singh alias Sukha above said put up his signature in Punjabi language, ASI (L.R.) Harbans Lal and ASI (L.R.) Manjit Singh put up their respective signatures on the notice as the witnesses. Then I, S.I. asked the name and address to the other young man, wearing the T-Shirt of blue color and he told his name Gurpreet Singh alias Pannu son of Nehru Singh son of Sadhu Singh resident of Ariyan Wala. I, S.I. told to

Gurpreet Singh alias Pannu that I, S.I. told to Gurpreet Singh alias Pannu that I am Sikander Singh rank Sub Inspector, and I am posted as investigation officer in Punjab Police in the police station City Faridkot. I have the doubt of having any intoxicant substance in the Momi envelope caught in your right hand and with you but you have the legal right that you can get the search conducted of the Momi envelope caught in your right hand by any Magistrate Sahib or by any Gazette Officer, which will be called on the spot without and delay or you can be taken to them. Thinking for a while, Gurpreet Singh alias Pannu that I want to conduct the search of the Momi envelope caught in my hand and of my own through any Gazette officer or by any Magistrate Sahib, upon which typing the notice, taken its print, on which Gurpreet Singh alias Pannu above said put up his signature in Punjabi language, ASI (L.R.) Harbans Lal and ASI (L.R.) Manjit Singh put up their respective signatures on the notice as the witnesses. Then I, S.I., at around 5.49 P.m., I got not down at Police Control Room at their phone Number 75270-17100 from my own Mobile Phone Number 99157-00520, for sending any Magistrate Sahib or any Gazette officer on the spot and then approximately at 6.05. P.M., Shri Jastinder Singh Dhaliwal D.S.P. (D) Faridkot Sahib with the conveyance of an official vehicle along with Gunman staff, reached there and I, S.I. intimated him about the facts of the case. D.S.P. Sahib made the effort to join the persons passing from there, in the police party but shown their helplessness, everyone went from the spot. Out of the young men nabbed by the police party, young man wearing the Gajri T-Shirt told to D.S.P. (D) Faridkot, his name Sukhwant Singh alias Sukha son of Gurdas Singh son of Kaka Singh resident of Rajewala. D.S.P. (D) Faridkot told to Sukhwant Singh alias Sukha that I am Jastinder Singh Dhaliwal, I am Gazette officer of Punjab police and I am posted as Deputy Superintendent of Police (D) Faridkot I have the doubt of having any intoxicant substance in the Momi envelope caught in your right hand and with you but you have the legal right that you can get the search conducted of the Momi envelope caught in your right hand and of your own by any Magistrate Sahib or by any Gazette Officer, which will be called on the spot without and delay or you can be taken to them. Thinking for a while, Sukhwant Singh alias Sukha said that I do not want to invite any Magistrate Sahib or to any Gazette officer Sahib for conducting the search of the Momi envelope caught in my hand and of my own, I have full belief upon you, you can conduct the search of the Momi envelope caught in my hand and of my own upon which, typing the notice and taken its print on which Sukhwant Singh alias Sukha put up his signature in Punjabi

language, I, S.I. and A.S.I. (L.R.) Harbans Lal put up our signatures as the witnesses. Then according to the instruction and under the supervision of Jastinder Singh Dhaliwal P.P.S. Deputy Superintendent of Police (D) Faridkot, obtaining the Momi envelope black color caught in the right hand of Sukhwant Singh alias Sukha above said, opened and checked it, and then found in the envelope three boxes of NRX Tramadol Hydrochloride Tablets 100 mg Calvidol-100 SR and found in the each box 50/50 strips of Tramadol Hydrochloride Tablets 100 SR, written on the each strip (leaf) B. No. 20 J-T1084, MFG.JAN 2021 EXP DEC 2022 M.R.P. Rs. 230.50 PER 10 TABS. INCL OF ALL TAXES, there are 10-10 intoxicant tablets in the each strip, found total 1500 intoxicant tablets in 150 strips of Tramadol Hydrochloride Tablets 100 mg, Callyidol-100 SR. Putting these intoxicant tablets in the very same boxes, conducted the Jama Talashi of Sukhwant Singh alias Sukha above said under rules. Recovered the amount of Rupees 150/- currency notes from the right pocket of his trouser. Apart from it, nothing more cash currency, papers or any other objectionable substance are not recovered from him. Sukhwant Singh alias Sukha above said could not produce any license/ permit, bill etc on the spot for occupying 1500 intoxicant tablets Marka Tramadol Hydrochloride Tablets 100 mg, Calvidol 100 SR under his possession. Putting the above said recovered three boxes of the intoxicant tablets in the very same envelope, tying in a cloth, converting it into a bulk parcel, sealed the parcel with my seal words S.S., impressing the seal on a paper, prepared the sample of the seal. D.S.P. (D) Sahib sealed the bulk parcel with his seal words J.S. and attested it, putting his one seal on the sample of seal attested it. Then D.S.P. (D) Faridkot asked the name and address to the young man wearing blue T-Shirt and he told his name Gurpreet Singh alias Pannu son Sadhu Singh resident of Araiyan Wala. D.S.P. (D) Sahib told to Gurpreet Singh alias Pannu above said that I am Jastinder Singh Dhaliwal, I am Gazette officer of Punjab police and I am posted as Deputy Superintendent of Police (D) Faridkot. I have the doubt of having any intoxicant substance in the Momi envelope caught in your right hand and with you but you have the legal right that you can get the search conducted of the Momi envelope caught in your right hand and of your own by any Magistrate Sahib or by any Gazette Officer, which will be called on the spot without and delay or you can be taken to them. Thinking for a while, Gurpreet Singh alias Pannu said that I do not want to invite any Magistrate Sahib or to any Gazette officer Sahib for conducting the search of the Momi envelope caught in my hand and of my own, I have full belief upon you, you can conduct the search of the Momi

envelope caught in my hand and of my own upon which, typing the notice and taken its print on which Gurpreet Singh alias Pannu put up his left hand thumb impression on it, I, S.I. and A.S.I. (L.R.) Harbans Lal put up our signatures as the witnesses. Then according to the instruction and under the supervision of Jastinder Singh Dhaliwal P.P.S. Deputy Superintendent of Police (D) Faridkot, obtaining the Momi envelope black color caught in the right hand of Gurpreet Singh alias Pannu above said, opened and checked it, and then found in the envelope three boxes of NRX Tramadol Hydrochloride Tablets 100 mg Calvidol-100 SR and found in the each box 50/50 strips of Tramadol Hydrochloride Tablets 100 SR, written on the each strip (leaf) B. No. 20 J-T1084, MFG.JAN 2021 EXP DEC 2022 M.R.P. Rs. 230.50 PER 10 TABS. INCL OF ALL TAXES, there are 10-10 intoxicant tablets in the each strip, found total 1000 intoxicant tablets in 100 strips of Tramadol Hydrochloride Tablets 100 mg, Callyidol-100 SR. Putting these intoxicant tablets in the very same boxes, conducted the Jama Talashi of Gurpreet Singh alias Pannu above said under rules. Recovered the amount of Rupees 100/- currency notes from the right pocket of his trouser. Apart from it, nothing more cash currency, papers or any other objectionable substance are not recovered from him. Gurpreet Singh alias Pannu above said could not produce any license/ permit, bill etc on the spot for occupying 1000 intoxicant tablets Marka Tramadol Hydrochloride Tablets 100 mg, Calvidol 100 SR under his possession. Putting the above said recovered three boxes of the intoxicant tablets in the very same envelope, tying in a cloth, converting it into a bulk parcel, sealed the parcel with my seal words S.S., impressing the seal on a paper, prepared the sample of the seal. After use, handed over the seal to ASI (L.R.) Harbans Lal 7/Faridkot and D.S.P. (D) Sahib sealed the bulk parcel with his seal words J.S. and attested it, putting his one seal on the sample of seal attested it. Occupying 1500 intoxicant tablets Marka Tramadol Hydrochloride Tablets 100 mg, Calvidol 100 SR by Sukhwant Singh alias Sukha under his possession and Occupying 1000 intoxicant tablets Marka Tramadol Hydrochloride Tablets 100 mg, Calviidol- 100 SR by Gurpreet Singh alias Pannu, without bill/license, permit, for defining the term of the commission of offence under Section 22 (c)/61/85 N.D.P.S. ACT, typing the rukka and taking its print, it is being sent to the police station through Constable Rupinderjit Singh 70/Faridkot (by hand) for the registration of the case under Section 22 (c)/61/85 N.D.P.S. ACT against name Sukhwant Singh alias Sukha son of Gurdas Singh son of Kaka Singh resident of Rajewala and against Gurpreet Singh alias Pannu son of Nehru Singh son of Sadhu Singh

resident of Aariyan Wala. Registering the case, the number of the case may be intimated. The special reports may be issued. The information may be given at P.C.R. and to the senior officers. I, S.I. departing on the spot for the investigation. Sd/- Sikander Singh SI Police Station City Faridkot dated: 04.04.2021, place at Bridge near Deh Sambhal centre, Faridkot at 07.50 PM. Today on receipt of rukka in the police station, registering the case above said under the afore mentioned sections against the accused above said through CCTNS, the case file is being sent to the concerned SI on the spot. The special reports are being sent to Duty Magistrate Sahib and to the senior officers through SI Nirmal Singh Number 264/Faridkot. Compliance rapar Number 53 dated 04.04.2021 at 9.36 PM.”

3. Learned counsel for the petitioner inter alia contends that the petitioner has been in custody since 04.04.2021 for being allegedly found in possession of 1000 tablets of Tramadol. Learned counsel submits that a false case has been planted upon him which finds due credence from the fact that he has no criminal antecedents whatsoever. It has also been submitted that after the challan was presented way back on 10.07.2021, it was followed by the framing of charges of 11.11.2021, however, till date the trial had not concluded and only 04 prosecution witnesses had been examined so far; the delay in the trial had occurred on account of the non-appearance of the prosecution witnesses, who in the case in hand, are all official witnesses. Learned counsel has asserted that the petitioner cannot be made to languish in custody for reasons not attributable to him but to the prosecution and prosecution only. In support, learned counsel has place reliance upon ***Dheeraj Kumar Shukla Vs. State of Uttar Pradesh (SLP(Crl.) No.6690/2022)*** decided on 25.01.2023 wherein in similar circumstances on account of the inordinate delay in the conclusion of

the trial, Hon'ble the Supreme Court had done away with the bar created under Section 37 of the NDPS Act.

4. Per contra, learned State counsel while opposing the prayer made by learned counsel for the petitioner, on instructions from ASI Gurdev Singh, has not been able to dispute the submissions made by the counsel opposite with respect to the trial having been delayed on account of the non-appearance of the prosecution witnesses.

5. On a pointed query put to the learned State counsel, he, on instructions, has not controverted that the petitioner is not involved in any other criminal case much less under the NDPS Act.

6. I have heard learned counsel for the parties and perused the material placed on record.

7. The petitioner has been in custody since 04.04.2021. The petitioner, as also not disputed by the learned State counsel, is not involved in any other case under the NDPS Act. The trial is unlikely to conclude in the near future.

8. Hon'ble Supreme Court in ***Dheeraj Kumar Shukla Vs. State of Uttar Pradesh (SLP(Crl.) No.6690/2022)*** decided on **25.01.2023** has observed as under:-

“.... It is true that the quantity recovered from the petitioner is commercial in nature and the provisions of Section 37 of the Act may ordinarily be attracted. However, in the absence of criminal antecedents and the fact that the petitioner is in custody for the last two and a half years, we are satisfied that the conditions of Section 37 of the Act can be dispensed with at this stage, more so when the trial is yet to commence though the charges have been framed.”

9. In the facts and circumstances as enumerated hereinabove, this Court deems it appropriate to allow the instant petition by

dispensing with the conditions of Section 37 of the NDPS Act.

10. Accordingly, the instant petition is allowed. The petitioner be admitted to bail on his furnishing bail/surety bonds to the satisfaction of the Trial Court/Duty Magistrate concerned. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

11. Needless to add, in case the petitioner misuses the concession of bail granted to him, the State would be at liberty to seek cancellation of the same.

22.02.2024

Vinay

(MANJARI NEHRU KAUL)
JUDGE

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