

2024:PHHC:159684



207 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-26348-2024 (O&M)
DECIDED ON: 10.09.2024

BIRSA PURTY

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Saurav Bhatia, Advocate
for the petitioner.

Mr. Jaspal Singh Guru, AAG, Punjab.

SANDEEP MOUDGIL, J

CRM-36536-2024

Prayer in the present application is for placing on record ruqa, Consent Memo Notice under Section 50 of NDPS Act, notice under Section 50 of NDPS Act, Memo of Recovery, on-site Map, Memo of Arrest of the applicant/petitioner, Production Memo and Rapat No.10 as Annexures P-5 to P-12 respectively along-with exemption from filing the certified copy of the same.

Application is allowed, as prayed for.

Annexures P-5 to P-12 are taken on record, subject to all just exceptions.

CRM-M-26348-2024

1. The jurisdiction of this Court has been invoked under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.56, dated 11.05.2023, under Section 18 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'NDPS Act') (Section 29 of NDPS Act, added later on), registered at Police Station City Nawanshahar, District SBS Nagar.

2. The facts as narrated in the FIR reads as under:-

“SHO PS City Nawanshahar, Jai Hind. Today I, ASI alongwith ASI Jaswinder No. 254/SBSN, ASI Balwinder Singh No. 1173/SBSN, ASI Ajaypal Singh No. 982/SBSN, C-2 Arundeeep Singh No. 988/SBSN by riding Government Vehicle No. PB32- P-5580 whose driver is ASI Narinder Singh No. 449/SBSN and by taking along laptop, printer and investigation kit had departed from CIA Staff Nawanshahar and after passing through Bus Stand Nawanshahar and Mehndipur were going towards Village Gujjarpur on link road for patrolling and checking of suspicious persons. At time about 02:00 PM when vehicle of police party reached at the turn near Dr. Ambedkar Bhawan then one middle aged person was seen coming on the main road beneath railway line under-bridge built at Village Gujjarpur side while carrying one black colour heavy kit bag on his right shoulder but on seeing the vehicle of police party coming from front he suddenly got worried and started walking towards the ground adjoining to cremation ground at his right hand side with fast steps. On the basis of suspicion I, ASI took our vehicle near him and apprehended him with help of co-employees and asked him about his name and address and he disclosed his name as Birsa Purti son of Itwa Purti resident of Village Lagora, PO Sawaniya, PS Bandgaon, District West Singhbhum (Chaibasa), Jharkhand. On the basis of suspicion of having any objectionable/intoxicating substance in his possession or in black colour heavy kit bag which was under his possession, I, ASI made phone call at Phone No. 95646-95646 of Control Room Shaheed Bhagat Singh Nagar and gave information about the facts at the spot and requested to

send any Gazetted Officer at the spot for search of apprehended person and his bag. At about 02:50 PM Sh. Surinder Chand PPS D.S.P. PBI (H&F) Shaheed Bhagat Singh Nagar reached at the spot with his staff in his official vehicle Bolero and I informed him about the facts at the spot and produced apprehended person Birsa Purti alongwith his black colour kit bag before D.S.P. Sahib. D.S.P. Sahib asked apprehended person about his name and address and he disclosed his name as Birsa Purti son of Itwa Purti resident of Village Lagora, PO Sawaniya, PS Bandgaon, District West Singhbhum (Chaibasa), Jharkhand. D.S.P. Sahib said to him that, "which language you speak and understand well". Birsa Purti said to D.S.P. Sahib that long time ago I have stayed at Kotkapura, Punjab for about 10/12 years, thus I can speak and understand well both languages Punjabi and Hindi. Then D.S.P. Sahib informed Birsa Purti about his identity by saying that, "I, Surinder Chand PPS am posted as D.S.P. PBI (H&F) Shaheed Bhagat Singh Nagar and am Gazetted Officer of Punjab Government, I have worn uniform of my rank and have attached name plate of my name, I have suspicion of having any intoxicating substance in your possession or in black colour heavy kit bag which is under your possession, thus you and black colour heavy kit bag which is under your possession have to be searched but you have legal right that if you want then you can give your search and search of black colour heavy kit bag which is under your possession in presence of any Magistrate or any other Gazetted Officer, either of them can be called at the spot or you alongwith your black colour heavy kit bag can be taken before either of them." Whereupon, Birsa Purti said to D.S.P. Sahib that, "I do not want to give my search and search of black colour kit bag which is under my possession in presence of any Magistrate or any other Gazetted Officer, I have full faith on you, you can get me and my black colour kit bag searched in your presence." D.S.P. Sahib wrote his consent memo and read over and explained to him and after hearing, understanding and admitting his consent memo as correct he gave his signature in Hindi and ASI Jaswinder No. 254/SBSN and ASI Balwinder Singh No. 1173/SBSN gave signatures as witnesses. Before search, D.s.P. Sahib gave notice u/s 50 NDPS Act to Birsa Purti and said that "before your search and search of your black colour heavy kit bag if you want then you can search me, my police party and our both official

vehicles, if any illegal substance is not recovered from you then you shall be released." After hearing, understanding the notice he said that, "I do not want to search you, your police party and your official vehicles." Below his notice he gave his signature in Hindi and ASI Jaswinder No. 254/SBSN and ASI Balwinder Singh No. 1173/SBSN gave signatures as witnesses. On order of D.S.P. Sahib, I, ASI tried to join any witness of public with police party before search but everybody expressed helplessness. Then c-2 Arundeeep Singh No. 988/SBSN was sent to Village Gujjarpur to join any respectable person with police party. He came back after about 20 minutes and said that he could not find any respectable person as all of them have gone to work. Whereupon, I, ASI searched the black colour heavy kit bag which was under possession of Birsa Purti in presence of D.S.P. Sahib and co-employees, from which one black colour polythene carry bag was recovered, which was having inside another polythene carry bag from which opium is recovered. I weighed the recovered opium on electronic weighing machine available with me and weight of recovered opium alongwith polythene carry bag was found to be 08 Kg. During search of Birsa Purti Rs. 500/- Indian currency notes were recovered from right pocket of pant worn by him. Then 08 Kg opium in same polythene carry bags recovered from Birsa Purti was put in one plastic box and parcel was prepared. I, ASI sealed the above mentioned parcel of plastic box containing 08 Kg opium with my stamp impression JS once. Prepared sample seal JS on three copies. After use I handed over my stamp to ASI Jaswinder No. 254/SBSN. Then D.S.P. Sahib sealed the above mentioned parcel of plastic box containing 08 Kg opium already sealed with my stamp impression JS with his stamp impression SC once. Prepared sample seal SC on three copies of sample seal JS. After use D.s.P. Sahib kept his stamp with him. Recovered case property one parcel of plastic box containing 08 Kg opium sealed with stamp impressions JS/SC, sample seals JS/SC, black colour kit bag, Rs. 500/-Indian currency notes recovered during personal search of accused Birsa Purti were taken in police custody with memo. D.S.P. Sahib, ASI Jaswinder No. 254/SBSN and ASI Balwinder Singh No. 1173/SBSN gave signatures on memo as witnesses. Birsa Purti did not produce any license or permit at the spot in respect to keeping 08 Kg opium in his possession. Birsa Purti

by keeping 08 Kg opium in his possession has committed an offence punishable u/s 18-61- 1985 NDPS Act. Therefore, Rug is written and is being sent to PS City Nawanshahar by the hand of C-2 Arundeeep Singh No. 988/SBSN for registration of FIR against above mentioned Birsa Perti under above mentioned sections. Number be intimated after registration of FIR. Special reports be sent to Area Magistrate Sahib and senior officers. Intimation be given at control room. I, ASI alongwith co-employees am investigating at the spot. Sd/- Jasvir Singh ASI CIA Staff Nawanshahar, District Shaheed Bhagat Singh Nagar, Date 11.05.2023. Today present in area of Village Gujjarpur at 04:50 PM. Today at police station: - At receipt of Ruga at police station, FIR is registered under above mentioned sections. Original Ruga alongwith copy of FIR is being sent by the hand of coming C-2 Arundeeep Singh No. 988/SBSN to ASI Jasvir Singh 635/SBSN at the spot. Special reports are prepared and are being sent to Area Magistrate and senior officers by the hand of S/Ct. Mukesh Kumar No. 919/SBSN. Intimation is being given at control room.”

3. It has been contended by learned counsel for the petitioner that act's requirements were broken during the investigation. Only the police officials were included as witnesses to the current case; no impartial public witnesses from the community were included. Section 50 of the NDPS Act is strictly non-compliant. It is clear from the accusations in the FIR that a Gazetted Officer conducted a physical search and sealed the contraband. However, the facts of the aforementioned are contained in the arrest and recovery memos that were created on the spot. As a result, the integrity of the investigating agency is adversely impacted in both cases.

4. Learned State counsel has contended that 8 Kgs of Opium has been recovered from the conscious possession of the present petitioner. The said quantity falls under the commercial quantity, which

attracts Section 37 of the NDPS Act. Thus, the petitioner is not entitled to be released on regular bail.

5. Having heard learned counsel for both the parties.

6. Drug addiction is a societal scourge that devastates individuals and communities, while drug trafficking has far-reaching consequences that undermine economies and fuel illicit activities, including terrorism. The use of narcotic drugs destroys lives, eroding an individual's humanity and reducing them to a mere shadow of their former self. As the grip of addiction tightens, users sacrifice their dignity, well-being, and ultimately, their very existence. It is the legislature's imperative to mitigate the harmful effects of drugs and substances on society, and to protect citizens from the ravages of addiction and the illicit drug trade.

7. It is important to remember that while an accused in a murder case may take the life of one or two individuals, those involved in narcotics trafficking are responsible for causing the deaths of numerous innocent young people who are vulnerable to addiction. The harmful effects of drug trafficking have a devastating impact on society, making those involved a significant threat to public safety. Even if released temporarily, it's likely that they will continue their illegal activities, prioritizing profits over human life and perpetuating a dangerous cycle of addiction and exploitation. In the present prevailing scenario, the drug trafficking, trading and its use has acquired dimensions of an epidemic which not only affects 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 along-with illicit money generation by drug trafficking.

8. 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.”

9. 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.

10. Adverting to the merits of the present case wherein 8 Kgs of Opium which is commercial in nature has been recovered which by no stretch of imagination can be said to be a planted recovery, as the same was found from a bag carried by him on his right shoulder. Apart from this, out of total 16 prosecution witnesses, five witnesses have been given up and three witnesses have been examined, which is sufficient for this Court to infer that the trial is in progress. Hence, this court finds no reason to enlarge the petitioner on bail at this stage.

11. In the light of above, considering the huge quantity of the contraband recovered and the manner in which the *modus operandi* is evident, wherein the petitioner is alleged to be actively involved, therefore petition deserves to be dismissed having no merits.

12. Hence, the same stands dismissed with no order as to costs.

10.09.2024

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(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*