

216 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.27657 of 2023 (O&M)
Date of decision : 30.01.2024

Sarabjit Singh @ Sabba

..... Petitioner

versus

Union of India through NCB Amritsar

..... Respondent

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. Rishu Mahajan, Advocate
for the petitioner.

Mr. Sourabh Goel, Advocate and
Ms. Shivani Sahni, Advocate
Ms. Geetika Sharma, Advocate
for respondent-NCB

PANKAJ JAIN, J. (ORAL)

1 This petition has been filed under Section 439 Cr.P.C. for grant of regular bail in NCB Crime No.82 dated 26.12.2021 registered under Sections 8/18/21/23/28/29 & 30 of NDPS Act at Police Station NCB Crime (Khemkaran), District Tarn Taran.

2 The case of the prosecution as per the complaint filed before the Special Judge Tarn Taran is that on 26.12.2021 information was received from concerned Commandant BSF with respect to recovery of 22 packets of suspected narcotics substance in the area of their responsibility which they were willing to hand over to the NCB for further legal proceedings. It is being claimed that a secret information was received by the concerned I.O. from reliable source on 13.02.2022 that Shamsheer Singh

@ Shera s/o Sukhwant Singh, Sarbjeet Singh @ Sabba s/o Balveer Singh i.e. present petitioner and Baldev Singh S/o Sangha Singh residents of Village Mian Wala are involved in illicit trafficking of heroin which was recovered by the troops of BSF on 26.12.2021 and handed over to NCB. It is claimed that further information was received by I.O. that on 14.02.2022 all the aforementioned suspected persons would meet on a culvert near Kale Assal. The persons were intercepted on 14.02.2022 and it is claimed that during interrogation all of them suffered disclosure admitting their involvement in the aforesaid recovery of 32.900 kg of heroin.

3 Learned counsel for the petitioner submits that the alleged involvement of the petitioner on the basis of secret information that too after about 1 ½ months of the occurrence is without any basis and there is no incriminating evidence against the petitioner. So far as disclosure made by him while in police custody cannot be relied upon to drive home offence qua him in view of law laid down in ***Tofan Singh Vs. State of Tamil Nadu, (2021) 4 SCC 1.***

4 *Per contra* learned counsel for the respondent-NCB submits that there is other incriminating evidence against the petitioner as well which has been detailed out in the reply filed before this Court. Reference is made to para 6, which reads as under :-

“6.That the call detail records show that the petitioner Sarabjit Singh having mobile no. 8264276700 was in communication with the other accused Baldev Singh having mobile number 9501484360 on 14.02.2022 and remained in touch with each other till evening time when they were detained by NCB officials. Besides there are as many as 12 calls between Shamsher Singh having mobile no. 7696017063 and the petitioner i.e Sarabjit Singh having mobile no. 8264276700.

It is evident from the call records that the accused persons were in constant touch with each other further proving the angle of conspiracy.

It is pertinent to mention here as per the intelligence note 13.02.2022 and 14.02.2022 all the three co- accused were going to meet each other during night time to conspire and hatch for another big crime like they had done on the intervening night of 25.12.2021 and 26.12.2021 when they had gone to the India- Pakistan border for the sole purpose of smuggling of Heroin. It was during that period they were detained by NCB personnel.

As per the disclosure statement of all the accused persons i.e the petitioner Sarabjit Singh @ Sabba was in the link between Shamsher Singh @ Shera and Baldev Singh. It was the petitioner Sarabjit who had facilitated meeting of Shamsher Singh with Baldev Singh.

All the accused i.e the three accused persons have accepted in their voluntary statements also that they have already smuggled Heroin from Pakistan earlier also.

They have stated that on the intervening night of 25.12.2021 and 26.12.2021 when their consignment of 22 packets was caught by BSF at M W Uttar, they ran away from the spot. And were about to meet on 14.02.2022 night again when NCB officials apprehended them.

Shamsher Singh in his voluntary statement has confessed that he has changed his mobile. Shamsher Singh has also specifically stated the amounts which he had received during pervious smuggling activities.”

5 He further refers to another case registered against the petitioner i.e. FIR No.256 dated 12.06.2023 registered for offences punishable under Sections 22/61/85 of NDPS Act along with Section 52 A of the Prisons Act.

6 Joining issue thereon counsel for the petitioner has produced order dated 27.09.2023 passed by Special Judge Tarn Taran which reads as under :-

“LR/ASI Rashpal Singh, No.1271/TT, has come present and made a statement to the following effect :-

"Stated that offence under Section 22 NDPS Act has been deleted from the present FIR and the offence remain in the case is 52-A

Prison Act. The copy of DDR No. 20 in this regard is placed on record today."

In view of the statement of LR/ASI Rashpal Singh, No.1271/TT, learned counsel for applicant-accused has made a statement for withdrawal of the present bail application.

In view of statement made by learned counsel for applicant-accused, the present bail application is dismissed as withdrawn.

File be attached with remand papers."

7 He thus contends that Section 22 of the NDPS Act having been deleted from the subsequent FIR No.256 dated 12.06.2023, the same cannot be relied upon to deny bail to the petitioner.

8 Custody certificate has been filed. The same is taken on record. As per the custody certificate, the petitioner has been in custody for 1 year, 11 months & 10 days.

9 Learned State counsel is not in a position to dispute the aforementioned factual assertions based on record.

10 Having heard counsel for the parties and after going through records of the case, keeping in view the incarceration suffered by the petitioner i.e. 1 year, 11 months & 10 days and keeping in view the fact that he has clean antecedents prior thereto and the nature of evidence that has come against the petitioner, the present petition is allowed. The petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the Ld. Trial Court/Duty Magistrate, concerned. However, in addition to conditions that may be imposed by the Trial Court/Duty Magistrate concerned, the petitioner shall remain bound by the following conditions :-

(i) The petitioner shall not mis-use the liberty granted.

(ii) The petitioner shall not tamper with any evidence oral or documentary during the trial.

- (iii) *The petitioner shall not absent himself on any date before the trial.*
- (iv) *The petitioner shall not commit any offence while on bail.*
- (v) *The petitioner shall deposit his passport, if any with the trial Court.*
- (vi) *The petitioner shall give his cellphone number to the police authorities and shall not change his cell-phone number without permission of the trial Court.*
- (vii) *The petitioner shall not in any manner try to delay the trial.*

11 Needless to say that anything observed herein shall not be construed to be an opinion on the merits of the case.

(PANKAJ JAIN)
JUDGE

30.01.2024
Pooja sharma-I

Whether speaking/reasoned	Yes
Whether Reportable :	No