



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

204

**CRM-M-29690 of 2024
DATE OF DECISION :- 24.06.2024**

Mukesh Kumar **...Petitioner**

Versus

State of Punjab **...Respondent**

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present:- Mr. Mehtab Singh, Advocate for the petitioner.

Mr. Adhiraj Singh, AAG, Punjab.

SUMEET GOEL, J. (Oral)

1. Present petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case bearing FIR No.66 dated 09.04.2024, registered for the offences punishable under Sections 18C,29,61/85 of the N.D.P.S Act at Police Station Mandi Gobindgarh, District Fatehgarh Sahib (Punjab).
2. The case set up in the FIR in question (as set out in the present petition by the petitioner) is as follows:-

"Copy of FIR No.66 dated 09.04.2024, Under Section 18,61 & 85 of N.D.P.S Act, Police Station Mandi Gobindgarh, District Fatehgarh Sahib (Punjab).

Copy Ruka, Chief Officer, P.S. Mandi Gobindgarh, Jai Hind, Today, I, ASI alongwith ASI Rajinder Singh No.330/FGS, HC Amandeep Singh No.780/FGS, C.Amandeep Singh No.837/FGS and PHG Lakhvir Singh No.151 were going on a Government Vehicle Ballero bearing No. PB-23T-3154 which was driven by its driver ASI Kuldeep Singh No.615/FGS alongwith his laptop and printer, were on patrolling duty for the



search of bad and doubtful persons and were present at T-point Main Gate Aggarsen Park Mandi Gobindgarh at about 01:30 P.M. two clean shaven persons were seen coming, who were having polythene bags in their hands, who after seeing the police party tried to return back, to whom I, ASI asked to stop after giving a ruka and over powered them with the help of the other police officials and asked from them about their names and addresses. Out of them, first person disclosed his name as Shri Pal S/o. Ram Chander, R/o. Village Bharatpura Agra Tehsil Faridpur, Police Station Bhootan, District Bareilly, U.P. and another person disclosed his name as Kali Charan S/o. Ram Chander, R/o. Village Bharatpura @ Agra Tehsil Faridpur, Police Station Bhootan, District Bareilly, U.P. Then I, ASI disclosed my name and designation to Shri Pal and said to him that there seems an intoxicated substance in the black colour polythene envelope caught in your right hand. That the search of your polythene envelope is required to be conducted. But you have a legal right that you can get your polythene bag searched before any Gazetted Officer or Magistrate, where either you can be presented alongwith your polythene bag before them or they can be called at the spot. He was told about this clearly. He after understanding about his rights, replied that I do not want to call any Gazetted officer or Magistrate at the spot. I have full faith upon you. You can search of my polythene bag kept in my right hand. On which I, ASI prepared the notice Under Section 50 of NDPS Act to be given to Shri Pal on which Shri Pal has Signed in English and the same was also signed by ASI Rajinder Singh No.330/FGS and H.C. Amandeep Singh No.780/FGS as witnesses, on which I, ASI certified the same as correct. Then I, ASI informed to Shri Pal about the same that you can get search of Government vehicle of police party before conducting the searching your black polythene bag kept in your right hand. Upon which he said that you are the police officers and I have full faith on you. I do not



want to search you as well as your Government vehicle. Upon which Shri Pal gave his consent and he signed in English on the same and ASI Rajinder Singh, No.330/FGS and HC Amandeep Singh NMo.780/FGS also signed on the same. Upon this I, ASI verified the same. I, ASI tried to join the passerby as independent witnesses but all of them refused to join investigation after telling their problems. Then I, ASI checked the polythene bag of Shri Pal after opening it. Upon which I found black colour substance in the polythene bag on which I, ASI checked and tasted it as per my own experience and found this black substance to be the opium, which weighed on the electronic weighing machine and found to be 1.00 Kg. of opium and the recovered opium was placed in a plastic container and the same was kept in the cloth bag and the parcel was prepared. Then I, ASI signed on the parcel with common seal as "JS" and the sample was separated which was also signed by me as "JS" and were taken into police possession. Then I, ASI disclosed my name and designation to Shri Kali Charan and said to him that there seems an intoxicated substance in the black colour polythene envelope caught in your right hand. That the search of your polythene envelope is required to be conducted. But you have a legal right that you can get your polythene bag searched before any Gazetted officer or Magistrate, where either you can be presented alongwith your polythene bag before them or they can be called at the spot. He was told about this clearly. He after understanding about his rights, replied that I do not want to call any Gazetted officer of Magistrate at the spot. I have full faith upon you. You can search of my polythene bag kept in my right hand. On which I, ASI prepared the notice Under Section 50 of NDPS Act to be given to Shri Kali Charan on which Shri Kali Charan has signed in English and the same was also signed by ASI Rajinder Singh No.330/FGS and H.C. Amandeep Singh No.780/FGS as witnesses, on which I, ASI certified the same as



correct. Then I, ASI informed to Shri Kali Charan about the same that you can get search of Government vehicle of police party before conducting the searching your black polythene bag kept in your right hand. Upon which he said that you are the police officers and I have full faith on you. I do not want to search you as well as your Government vehicle. Upon which Shri Kali Charan gave his consent and he signed in English on the same and ASI Rajinder Singh, No.330/FGS and HC Amandeep Singh NMo.780/FGS also signed on the same. Upon this I, ASI verified the same. I, ASI tried to join the passerby as independent witnesses but all of them refused to join after telling their problems. Then I, ASI checked the polythene bag of Shri Kali Chaan after opening it. Upon which I found black colour substance in the polythene bag on which I, ASI checked and tasted it as per my own experience and found this black substance to be the opium, which weighed on the electronic weighing machine and found to be 2.00 Kgs. of opium and the recovered opium was placed in a plastic container and the same was kept in the cloth bag and the parcel was prepared. Then I, ASI signed on the parcel with common seal as "JS" and the sample was separated which was also signed by me as "JS" and were taken into police possession. After using the seal the same was handed over to ASI Rajinder Singh, 330/FGS. The above accused Shri Pal kept 1.00 Kg. opium in his possession and the above accused Kali Charan kept 2.00 Kgs. Opium who have committed offence Under Section 18C/61/85 of NDPS Act. After this, ruka was got typed against the above accused namely Shri Pal, Kali Charan Under Section 18C/61/85 of NDPS, the same is being sent by diary to the Police Station Gobindgarh through PHG Lakhvir Singh, No.151, Police Station Gobindgarh. After registration of the case, the case number may be informed. W/M be sent to the control Room and Higher officers for their information. I, A.S.I. alongwith other police officials is present at the spot for investigation.



Sd/- Jaaspal Singh, ASI Police Station Gobindgarh, dated 09.04.2024 Area T-Point, Main Gate, Aggarsen Park, Mandi Goboindgarh at 3.50 PM. XXX.”

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 10.04.2024. Learned counsel for the petitioner has further argued that the contraband alleged to have been recovered from the petitioner is 400 gms of opium which is non-commercial quantity as per the provisions of the NDPS Act, 1985. Learned counsel has further argued that the petitioner has been falsely implicated into the FIR in question on account of a business rivalry. Learned counsel for the petitioner has further argued that the case set up against the petitioner is primarily on the basis of disclosure which is not likely to withstand the judicial scrutiny during the course of trial. In this view of the matter, learned counsel has prayed for grant of regular bail.

4. Learned State counsel has opposed the present petition arguing that the allegations raised are serious in nature and thus the petitioner does not deserve the concession of the regular bail. Learned State counsel has further argued that the FSL report has been received which indicate that the contraband recovered from the petition is actually opium. Learned State counsel seeks to place on record custody certificate dated 22.06.2024 in Court, which is taken on record.

5. I have heard counsel for the parties and have gone through the available records of the case.

6. The petitioner was arrested on 10.04.2024. The recovery alleged to have been made from the petitioner is 400 gms opium which is indubitably non-commercial in nature. The rival contentions of learned counsel for the parties; as to whether the recovery from the petitioner would



stand judicial scrutiny and as to whether the petitioner has been falsely implicated into the FIR in question; shall be gone into during the course of trial. This Court does not deem it appropriate to delve deep into these rival contentions, at this stage, lest it may prejudice the trial. Nothing tangible has been brought forward to indicate the likelihood of the petitioner absconding from the process of justice or interfering with the prosecution evidence. As per custody certificate dated 22.06.2024 filed by learned State counsel, the petitioner has suffered incarceration of more than two months. Further, as per the custody certificate, the petitioner is stated to be involved in another NDPS case registered on 04.08.2020 but is on bail in that case as well.

Suffice to say, further detention of the petitioner as an undertrial is not warranted in the facts and circumstances of the case.

7. In view of above, the present petition is allowed. Petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the Ld. concerned CJM/Duty Magistrate. However, in addition to conditions that may be imposed by the concerned CJM/Duty Magistrate, 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 Investigating Officer/SHO of concerned Police Station and shall not change his cell-phone number



without prior permission of the trial Court/Illaq
Magistrate.

(vii) The petitioner shall not in any manner try to delay
the trial.

8. In case of breach of any of the aforesaid conditions and those
which may be imposed by concerned CJM/Duty Magistrate as directed
hereinabove or upon showing any other sufficient cause, the
State/complainant shall be at liberty to move cancellation of bail of the
petitioner.

9. Ordered accordingly.

10. Nothing said hereinabove shall be construed as an expression of
opinion on the merits of the case.

11. Since the main case has been decided, pending miscellaneous
application, if any, shall also stands disposed off.

(SUMEET GOEL)
JUDGE

24.06.2024
P.Singh

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No