

216

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

CRM-M-30984-2022 (O&M)
Date of Decision : 06-05-2024

Surjit Singh @ Radd

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present:- Mr. Inder Pal Singh, Advocate
for the petitioner.

Mr. Mohit Kapoor, Sr. DAG Punjab.

PANKAJ JAIN, J. (Oral)

CRM-2541-2024

This is an application for placing on record Annexure P-5 to
Annexure P-38.

In view of the contents of the application, the same is allowed.

Annexure P-5 to Annxure P-38 are taken on record.

Main Case

1. Prayer in the petition is for regular bail in FIR No.131 dated 17.09.2021 registered for offences under Section 21(c) of the NDPS Act, at Police Station Sadar Patti, District Tarn Taran.
2. On 25.04.2024, the following order was passed.

“Counsel for the petitioner has invited attention to this Court to arrest memo qua the petitioner in FIR No.130 dated 16.09.2021, registered for offences punishable under Sections 379-B, 303 and 34 of the IPC, Police Station Sadar Patti, District Tarn Taran which shows that the petitioner was arrested in the said FIR On 17.09.2021. He further takes to the Court to the contents of the FIR No.131 dated 17.09.2021 which shows that the petitioner was arrested on 17.09.2021 in FIR No.131 after having found to be in conscious possession of narcotics. He submits that neither of the documents shows that the petitioner is under prior arrest. Police State is same i.e. Sadar Patti. Thus, the only inference that can be drawn is that at least either of the version is false and the petitioner has been falsely implicated.

State counsel prays for time to get instructions.

SSP, Tarn Taran to file his affidavit to explain the dichotomy as notice hereinabove.

Adjourned to 06.05.2024.”

3. Pursuant thereto short by way of an affidavit of Ashwani Kapur, IPS, Senior Superintendent of Police, Tarn Tarn on behalf of respondent-State has been filed. Relevant portion of the same reads as under:-

“4. That prior to the FIR No.131 dated 17.09.2021 u/s 21C/61/85 NDPS Act, PS: Sadar Patti, FIR No.130 dated 16.09.2021 u/s 379-B/323/34/201 IPC was registered against petitioner Surjit Singh as well as one Nishan Singh alias Shana son of Gurdeep Singh by name as well as one unidentified person on the statement of Baljit Singh son of Sukhdev Singh son of Massa Singh, r/o Village Saido, PS: Sadar Patti. As per the statement of Baljit Singh, on 15.09.2021 at about 7:30 PM in the evening, when he was on the way to his village on his Electric scooty, then three unknown persons having muffled faces armed with weapons came and snatched his scooty and Rs.2500/- cash and fled away from the spot. Later on, Baljit Singh identified two persons as present petitioner Surjit Singh as well as Nishan Singh. Thus the said FIR was registered.

5. That later on, on the next day, the petitioner was apprehended along with conscious possession of 270 gram heroin and FIR No.130 dated 17.09.2021 in the same police station. Since the arrest of the petitioner was

required in FIR No.130 dated 16.09.2021 and as such he was arrested in FIR No.130 on 17.09.2021.”

4. Learned State counsel thus submits that since the petitioner was arrested in FIR No.130 also on 17.09.2021, the story of false implication cannot be believed at this stage.

5. Counsel for the petitioner has thereafter taken to this Court to Dissent Memo (Annexure P-5) to submit that even before the petitioner could be searched, police authorities were aware of the FIR No.131 and the offences for which he was booked and it is a case of chance recovery and not of secret information. He relies upon judgment rendered by Division Bench in the case of ***Didar Singh @ Dara Vs. The State of Punjab, 2010(3) RCR Criminal 337*** wherein Division Bench held as under :-

*“29. There is another infirmity on the record which further creates a doubt about the entire prosecution case. As per the prosecution, at the time of the recovery, various documents were prepared. Those documents are Ex.PA, Ex.PB, Ex.PC, Ex.PD, Ex.PE and Ex.PF. All these memos bear the FIR number of the case. It is admitted case of the prosecution that when these documents were prepared, the FIR was not registered and FIR No. was not available as the same was registered later on, on the ruqa sent by the police. It has not been explained how all these memos contained the FIR number, which was not existing at the time when these memos were prepared. In *Ajay Malik & Ors. v. State of U.T., Chandigarh, 2009(3) RCR (Criminal) 649*, this Court while dealing with similar situation has observed that two inferences could be drawn from such situation, i.e., either the FIR was registered prior to the alleged recovery of the contraband or number of FIR was inserted in the document*

after its registration. But in both situations, it seriously reflects upon the integrity of the prosecution version. While relying upon several other decisions, it was held that such serious lapses in the prosecution case create a doubt to the prosecution theory.”

6. Coordinate Bench of this Court in CRM-M-10343 of 2020 titled as ***Ajay Kumar @ Nannu Vs. State of Punjab and other connected matters***, in order dated 31.03.2021 held as under :-

“(iii) that mentioning of number of FIR and additional offences in the recovery memo shows manipulation and fabrication of recovery memo subsequently in the police station which denudes recovery memo of any sanctity and strikes out integrity and shatters credibility of the prosecution version and entitles the petitioners to grant of bail. In support of his arguments Mr. Vipul Jindal, learned Counsel for the petitioners has placed reliance on the observations in judgments passed in Ajay Malik Vs. State of U.T. Chandigarh : 2009(3) RCR (Criminal) 649 (P&H); Didar Singh @ Dara Vs. State of Punjab : 2010(3) RCR (Criminal) 337 (P&H); where mentioning of subsequent details in recovery memo was held to affect sanctity/credibility of recovery memo and Criminal Appeal No.1809 of 2009 titled as 'Ram Chander Sharma @ Pandit Vs. State (NCT of Delhi)' decided on 01.12.2020 (SC); CRM-M-38153-2019 (O&M) titled as 'Satish Kumar Vs. State of Punjab' decided on 11.02.2020; CRM-M-42370-2019 (O&M) titled as 'Tarsem Lal Vs. State of Punjab' decided on 17.09.2020; CRM-M- 44921-2019 titled as 'Gurdeep Singh Vs. State of Punjab' decided on 18.02.2020; CRM-M-32615-2018 titled as 'Rinku Singh Vs. State of Punjab' decided on 07.08.2018; CRM-M-61999-2018 titled as 'Jatinder Vashisht Vs. State of Punjab' decided on

26.03.2019; CRM-M- 34433-2019 titled as 'Harvinder Singh @ Shammi Vs. State of Punjab' decided on 25.11.2019; CRM-20778-2018 in CRAS2212-SB-2016 titled as 'Kashmir Singh @ Koki Vs. State of Punjab' decided on 24.01.2019; CRM-19587-2019 in CRA-S-2884-SB-2016 titled as 'Charno Vs.State of Punjab' decided on 16.08.2019; CRM-M36504-2020 (O&M) titled as 'Rajandeep Singh @ Ghughi Vs.State of Punjab' decided on 28.01.2021 and Mustkeem@ Sirajudeen Vs. State of Rajasthan (SC): 2011(3) RCR (Criminal) 766 where bail was granted/suspension of sentence was allowed on this ground.

xxx xxx xxx

16. In *Mustakeem @ Sirajudeen Vs. State of Rajasthan* : AIR 2011 SC 2769 it was held by Hon'ble Supreme Court that if the recovery memos were prepared at the Police Station itself then the same would lose its sanctity. In ***Ajay Malik Vs. State of U.T. Chandigarh* : 2009(3) RCR (Criminal) 649 (P&H)** it was held by this Court that presence of FIR details on recovery memos etc. leads to two inferences: either the FIR was registered prior to the alleged recovery of contraband or the number of FIR was inserted in these documents after its registration in both the situations it seriously reflects upon the integrity of the prosecution version. This view was upheld and reiterated by the Division Bench of this Court in ***Didar Singh @ Dara Vs. State of Punjab* : 2010(3) RCR (Criminal) 337 (P&H)** and mentioning of such details in recovery memo was held to affect sanctity/credibility of recovery memo. In ***Criminal Appeal No.1809 of 2009 titled as 'Ram Chander Sharma @ Pandit Vs. State (NCT of Delhi)'*** decided on 01.12.2020 (SC); CRM-M-38153-2019 (O&M) titled as '**Satish Kumar Vs. State of Punjab**' decided on 11.02.2020; CRM-M-42370-2019 (O&M) titled as '**Tarsem Lal Vs. State of Punjab**' decided on 17.09.2020; CRM-M-44921-2019 titled

as Gurdeep Singh Vs. State of Punjab' decided on 18.02.2020; CRM-M-32615-2018 titled as 'Rinku Singh Vs. State of Punjab' decided on 07.08.2018; CRM-M-61999-2018 titled as 'Jatinder Vashisht Vs. State of Punjab' decided on 26.03.2019; CRM-M-34433-2019 titled as 'Harvinder Singh @ Shammi Vs. State of Punjab' decided on 25.11.2019; CRM-20778-2018 in CRA-S-2212-SB-2016 titled as 'Kashmir Singh @ Koki Vs.State of Punjab' decided on 24.01.2019; CRM-19587-2019 in CRA-S-2884-SB-2016 titled as 'Charno Vs. State of Punjab' decided on 16.08.2019; CRM- M-6504-2020 (O&M) titled as 'Rajandeep Singh @ Ghughi Vs.State of Punjab' decided on 28.01.2021 and Mustkeem@ Sirajudeen Vs. State of Rajasthan (SC): 2011(3)RCR (Criminal) 766 bail was granted/suspension of sentence was allowed on this ground.

xxx xxx xxx

20. In view of the above, the petitions are allowed and the petitioners are ordered to be released on regular bail on furnishing of personal bond and bond of one surety in heavy amount to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.”

7. Learned State counsel however submits that the Dissent memo is a written document and mentioning of the FIR is on the top left hand side. The petitioner is behind bars for more than 2 years and 7 months. The allegation was of being in possession of 270 gms of heroin.

8. As per custody certificate, there are two more FIRs against the petitioner. FIR No.09 dated 22.01.2019 registered for offences punishable under Sections 22/61/85 of the NDPS Act and another FIR

No.144 dated 25.09.2023 registered for offences punishable under Sections 21/61/85 of the NDPS Act and 52A Prison Act.

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

10. Counsel for the petitioner further submits that FIR No.144 dated 25.09.2023 relates to alleged recovery of 5 miligrams of heroin from the petitioner and in FIR No.09 dated 22.01.2019, petitioner is alleged of being in possession of 100 intoxicant tablets. The contraband in both the FIRs is of less than commercial quantity.

11. Without commenting upon the merits of the case and keeping in view the period of incarceration suffered by the petitioner, present petition is allowed. The petitioner is ordered to be released on bail on her 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.

(iii) The petitioner shall not commit any offence similar to the one alleged in the present case.

(iv) The petitioner shall deposit his passport.

(v) 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.

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

06-05-2024
spn

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned :Yes
Whether Reportable : No