

2024:PHHC:111525



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

**CRM-30167-2024 IN/AND
CRM-M-35367-2023**

Reserved on: 05.08.2024

Pronounced on: 30.08.2024

Harnoor Singh

.... Petitioner

Versus

State of Punjab

.... Respondent

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Naresh Jain, Advocate, for the applicant-petitioner.

Ms. Manjot Kaur, AAG, Punjab.

GURBIR SINGH, J.

CRM-30167-2024

Prayer in this application filed under Section 482 Cr.P.C. is to place on record copy of Final Report, dated 14.10.2021, in FIR No.135, dated 21.07.2021, registered under Sections 384, 34 IPC at Police Station Jawaharnagar, District Kota and copy of order dated 03.06.2024 passed by learned Additional Sessions Judge, Kota as Annexures P-19 and P-20.

For the reasons mentioned in the application, same is allowed and the documents Annexures P-19 and P-20 are taken on record subject to all just exceptions.

CRM-M-35367-2023

This is second petition that has been filed under Section 439 of Cr.P.C. for grant of regular bail to the petitioner in case FIR No.0032, dated 09.03.2022, registered under Section 18 of NDPS Act, 1985 (Section 29 of NDPS Act added lateron) at Police Station Sadar Hoshiarpur, District Hoshiarpur. The earlier petition i.e. CRM-M-22638-2022 was dismissed by this Court vide order dated 21.03.2023. The petitioner had also filed another petition i.e. CRM-M-17760 of 2022 for setting aside the final report dated 30.03.2022 and to handover investigation in the FIR, in question, to some independent agency for conducting re-investigation. In the said petition, vide order dated 28.04.2022, the coordinate Bench of this Court, while issuing notice of motion, directed the trial Court to adjourn the case beyond the date fixed before this Court. It is submitted that father of the petitioner filed a complaint before the Judicial Magistrate, Kota (Rajasthan) with regard to illegal acts of the police officials of District Hoshiarpur. The learned Court, taking cognizance of the matter, ordered registration of FIR under Section 156(3) Cr.P.C. and accordingly, FIR No.219, dated 06.05.2022, under Sections 365, 343, 394, 120-B, 115, 167 of IPC, 1860 and Section 59 of NDPS Act, 1985, was registered against 15 police officials of District Hoshiarpur, at Police Station Kulhari, District Kota City. Even after lodging of missing report by the father of the petitioner, proceedings were undertaken by the Rajasthan Police and report dated 21.04.2022 was submitted by SHO, Police Station Talera (Rajasthan) to

Superintendent of Police, District Bundi (Rajasthan). The report dated 21.04.2022 which is based on evidence collected from CCTV footage of Hotel Clarke and CCTV footage of various toll plazas, reads as under:-

“From the report dated 21.04.2022, it is apparent that on dated 07.03.2022, at 4 PM, the petitioner was seen alone in Hotel Clarke Premier-Room No.302. However, very surprisingly, if Form of Hotel Clarks (which is filled at the time of taking the room), is perused, the same would reveal that the same bears the signatures and mobile number of ASI Sucha Singh (Reader of SSP). From the same, it is apparent that it is under a well-planned conspiracy that the petitioner has been implicated. If as per the prosecution story, he had come to Rajasthan to search proclaimed offenders, then it is not understood as to why he (ASI Sucha) was there in Room No.302 of petitioner and as to why the Hotel Room Filling Form of Room No.302, bears his signatures and mobile number. The said Form, for kind perusal of this Hon'ble Court, is attached herewith as Annexure P-9 for the kind perusal of this Hon'ble Court.

It would be also not out of place to mention here that from the CCTV Footage, besides ASI Sucha Singh, another police personnel ASI Mahesh Chander is also seen at Hotel Clarks Premier on 07.03.2022. The same police official ASI Mahesh Chander, on 09/03/2022, can be seen in the Press Conference conducted by SSP, wherein ASI Mahesh Chander can be seen holding hand of the petitioner-Harnoor Singh. Thus, from all this, innocence of the petitioner and his false implication can be gauged.”

It is further submitted that in FIR No.219 (supra), it has been found that 8 police officials of Punjab Police (District Hoshiarpur) have been found to have committed various offences. Report dated 03.06.2023 has already been submitted to the learned trial Court. In fact, the petitioner was abducted. He was shown to be in same clothes in the CCTV footage collected on three days i.e. 07.03.2022, 08.03.2022 and 09.03.2022.

Learned State counsel has opposed the petition by contending that the petitioner purchased the contraband from the supplier from Madhya Pradesh and came to Hoshiarpur on 09.03.2022 to supply the same but was caught red-handed at the *naka* and the FIR, in question, was registered. From the data of mobile phone of the petitioner as analyzed by the Cyber Crime, it was found that there were various recordings in which the petitioner was asking the supplier to supply 7-8 kgs of opium as he had to supply that further and if that supplier was not in a position to supply, then he could take it from other supplier as the other supplier was ready to give him 20 kgs of opium. The said voice recording was of 06.03.2022. On further analyzing the data of petitioner's mobile, it was found that one lady had shared many videos with the petitioner sharing with him the method of adulterating and increasing the quantity of opium before supplying it further. The earlier recording reveals that the petitioner had come to Amritsar on 22.12.2021 and was mentioning about the supply of opium and having conversation with the smuggler of Amritsar. His mobile phone was working throughout on 07.03.2022 and 08.03.2022. There is nothing which could prove that the petitioner was kidnapped. There is delay in registering the complaint of kidnapping. All the police officials against whom the allegations were levelled, were present at Hoshiarpur or nearby areas from 07.03.2022 to 09.03.2022.

I have heard the submissions of learned counsel for the petitioner, learned State counsel and have gone through the paper book.

The petitioner has already filed CRM-M-17760-2022 with the prayer clause which reads as under:-

“It is therefore, respectfully prayed that the final Report Under Section 173 (2) Cr.P.C dated 30.03.2022 presented in FIR No.32 dated 09.03.2022, Under Sections 18/29 of NDPS Act, Police Station Sadar Hoshairpur, District Hoshiarpur (Annexure P-3) may kindly be set aside and the investigation of the FIR No.32 dated 09.03.2022, Under Sections 18/29 of NDPS Act, Police Station Sadar Hoshiarpur, District Hoshiarpur (Annexure P-1) may kindly be handed over to some Independent Agency to conduct reinvestigation or denovo investigation in the above mentioned case as the petitioner was kidnapped from Clarks Hotel, Kota (Rajasthan) on 07.03.2022 at 11:25 PM and by crossing the different Toll Plazas on the intervening nights of 08.03.2022 to 09.03.2022 reached at Hoshiarpur and on the next day on 09.03.2022 the above mentioned FIR has been registered alleging the huge recovery of Narcotics (the CCTV footage of Clarks Premium Hotel and of different Toll Plazas and locations are available with the petitioner).

With the further prayer that during the pendency of the present petition the proceedings pending before the Trial Court in the above mentioned FIR may kindly be stayed.

Further, for a direction to the respondent No.1 & 2 to register a case against the errant police officers who kidnapped the petitioner and planted a false case in-collusion with each other.”

In CRM-M-17760-2022, the coordinate Bench of this Court passed the order on 28.04.2022, which reads as under:-

“Through this petition, the petitioner seeks setting aside the final report dated 30.03.2022 presented in FIR No.32 dated 09.03.2022, under Sections 18 and 29 NDPS Act, Police Station Sadar Hoshiarpur, District Hoshiarpur, and to hand over the investigation of the said FIR to some independent agency for conducting re-investigation. Learned counsel for the petitioner contends that the petitioner has falsely been implicated in the present case; that on 07.03.2022, the petitioner was picked up from a hotel in Kota (Rajasthan) and was brought to Hoshiarpur; that transit of the petitioner from Kota to Hoshiarpur was recorded in CCTV footage, clearly

showing the date and time; that the above-noted FIR was lodged against the petitioner on 09.03.2022 with the allegations that 10 kg. opium had been recovered from his Verna Car; that however, the said Car was lying parked outside the said hotel, as would decipher from the CCTV footage; that the said car was brought by two police officials through another route, as would evident from the various CCTV footage of Toll Plazas. Learned counsel further contends that the father of the petitioner moved the representation dated 23.03.2022 (Annexure P-2) alongwith all proofs, specially CCTV footage, to the Director General of Police, Punjab, and other higher authorities, but in the meantime, the impugned challan report dated 30.03.2022 was filed. In support of his contentions, he relies upon the judgment delivered by the Hon'ble Supreme Court in Vinay Tyagi Vs. Irshad Ali @ Deepak and others, 2013 (2) R.C.R. (Criminal) 197. Notice of motion for 14.07.2022. In the meantime, trial Court is directed to adjourn the case beyond the date fixed before this Court.”

In case ***Mohammad Salman Hanif Shaikh Versus The State of Gujarat, Special Leave to Appeal (Criminal) No.5530-2022, dated 22.08.2022***, the Hon'ble Supreme Court granted bail in a case under the NDPS Act, 1985 though the recovery from the petitioner therein was of commercial quantity, by observing that the petitioner has already spent two years in custody and the conclusion of trial will take some time. The case in ***Chitta Biswas alias Subhas Versus The State of West Bengal, Criminal Appeal No.245 of 2020, dated 07.02.2020***, was also under the NDPS Act wherein recovery from the petitioner was of commercial quantity. The petitioner therein had already undergone custody of 1 year and approximately 7 months and he was granted bail. The case in ***Gopal Krishan Patra @ Gopalrusma Versus Union of India, Criminal Appeal No.1169 of 2022, dated 05.08.2022***, was registered by the NCB under

Sections 8, 20, 27-AA, 28 read with Section 29 of NDPS Act, 1985. The petitioner therein was granted bail on account of lengthy custody of approximately 2 years, 1 month and 17 days. In case ***Nitish Adhikary @ Bapan Versus The State of West Bengal, Special Leave to Appeal (Criminal) No.5769/2022, dated 01.08.2022***, the petitioner therein was granted bail in a case registered under Sections 21(c), 37 of NDPS Act. The petitioner had already undergone custody for a period of 1 year and 7 months and only one witness had been examined.

Petitioner is in custody since 09.03.2022. His custody is 2 years, 5 months and 20 days. Challan in the case was presented on 30.03.2022. Although challan was filed promptly but trial in the case has not yet started. Completion of trial would take long time.

Keeping in view the totality of the facts brought before this Court and the lengthy custody, the petitioner is ordered to be admitted to regular bail to the satisfaction of trial Court/Duty Magistrate on furnishing personal bond of Rs.2 lacs with two surety bonds of the same amount and one of the surety shall be resident of District Hoshiarpur (Punjab), with the further condition that (i) he shall get his mobile number registered in the trial Court for receiving messages through CIS and shall not change his mobile number during the pendency of the case; (ii) he shall notify his residential address in the trial Court as well as in the concerned police station of District Hoshiarpur and shall not change his residence without informing the trial Court as well as concerned police station; (iii) he shall

deposit his passport in the trial Court within 7 days and if he is not having any passport, the affidavit to that effect be furnished in the trial Court. The trial Court may impose any other condition as it deems fit.

Present petition is allowed accordingly.

However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case and the trial Court shall decide the case on the basis of material available before it.

(GURBIR SINGH)
JUDGE

August 30, 2024
sanjeev

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