

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

124

CRM-M-43109-2024
DECIDED ON: 06.09.2024

SUDESH KUMAR @ SHESHA

.... PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. A.S.Manaise, Advocate
for the petitioner.

Mr. Jaspal Singh Guru, AAG, Punjab.

SANDEEP MOUDGIL, J

1. RELIEF SOUGHT

The jurisdiction of this court has been invoked under section 483 BNSS, 2023, for grant of interim regular bail in the case arising out of FIR No.16 dated 01.02.2020 registered under Section 22,15 of Narcotic Drugs and Psychotropic Substance Act, 1985(for short- NDPS Act) at Police Station Tanda, District Hoshiarpur.

2. The contents of the FIR read as under:-

Station House Officer, Police Station Tanda. Jai Hind. Today myself ASI was present at police station. MHC police station told that ASI Ranjit Singh 120/HPR along with HC Jaspal Singh 1348, CT. Puneet Kumar 768, CT. Jasdeep Singh No. 1632, CT. Sahil Kumar No.1025 in the government vehicle No.PB-07BG-1270, the driver

thereof is PHG Sukhdev Singh No.25922 was present at T-point GT Road, Bijli Ghar Chowk Tanda regarding patrolling and checking of suspicious persons. ASI Ranjit Singh No. 120/HPR has given the information on phone that he has stopped truck bearing No.JK-03-6825 on the information from secret informant in which four persons were traveling who are suspicious to be in possession of poppy husk and intoxicant substance. Competent officer be sent on the spot. Upon which myself ASI along with HC Jiwan Lal No.761/HPR, HC Iqbal Singh No.232/HPR reached on the spot in private vehicle along with rapat No.38 dated 01.02.2020 where ASI Ranjit Singh along with fellow officials was found present at T-point GT Road Bijli Ghar Chowk, Tanda who produced, truck bearing No.JK-03-6825 and four persons travelling on it, to me. To whom myself ASI introduced as Amarjit Singh ASI Investigating Officer, PS Tanda and serial- wise asked their names/ address. The truck driver disclosed his name as Sanjiv Kumar @ Sanju son of Vijay Kumar resident of Awakhan PS Dina Nagar District Gurdaspur and second person disclosed his name as Sudesh Kumar @ Sheesha son of Puran Chand resident of Ganna village PS Phillaur District Jalandhar (Rural), third person disclosed his name as Sukhpal Kumar @ Ronki son of Raj Kumar resident of Ganna village PS Phillaur District Jalandhar (Rural) and the fourth person disclosed his name as Satish Kumar @ Buntty son of Mulkh Raj resident of Ganna village PS Phillaur District Jalandhar (Rural). To whom myself ASI told that I have suspicion that you are carrying intoxicating substance and poppy husk in the truck and wants to search the truck. You have legal right that you can get yourself and your truck searched from Magistrate or gazetted officer, who replied in one voice that we have complete faith in you. You can

search us and that of our truck. Notice has been issued to them u/s 50 of NDPS Act for their search and that of their truck and consent memos of four persons have been prepared separately. Upon which myself ASI tried to get some public witness join the police party before conducting the search of four persons. But everyone showing their inability did not join the police party then myself ASI conducted the personal search of driver Sanjiv Kumar @ Sanju in the presence of fellow officials then some heavy substance has been recovered in polythene bag lying in right pocket of his trouser. Upon checking the polythene, intoxicating powder was recovered from it which was weighed from electronic scale which comes to 160 grams. Parcel was prepared by putting the same along with polythene in plastic container. Parcel was attested with my seal AS. Sample seal has been prepared separately. Recovered intoxicating powder 160 grams was taken into police custody through separate recovery memo. Then personal search of second person Sudesh Kumar @ Sheesha son of Puran Chand was conducted and heavy polythene bag was recovered from his left pocket. Upon checking intoxicating powder was recovered from it. It was weighed through electronic scale which comes to 170 grams. Sample was prepared by putting the same along with polythene bag in plastic container. Parcel has been attested on the spot with my seal AS. Sample seal of AS was prepared separately and intoxicating powder of 170 grams was taken into police custody through separate recovery memo. Then personal search of third person Sukhpal Kumar @ Ronki son of Raj Kumar was conducted then heavy polythene bag was recovered from the left pocket of his shirt. Upon checking, intoxicating powder was recovered which was weighed with electronic scale which comes to 85 grams.

Parcel was prepared by putting the same along with polythene bag and it was attested with my seal AS on the spot. Sample seal was prepared separately. Recovered intoxicating powder 85 grams was taken into police custody through separate recovery memo. Then personal search of fourth person Satish Kumar @ Bunty son of Mulkh Raj was conducted then heavy polythene bag was recovered from right pocket of his shirt. Upon checking, intoxicating powder was recovered out of it. Recovered intoxicating powder was weighed through digital scale which comes to 58 grams. Parcel was prepared by putting the same along with polythene bag in plastic container which was attested by me with my seal AS on the spot. Sample seal was prepared separately. Recovered intoxicating powder 58 grams was taken into police custody through separate recovery memo. The search of vehicle No.JK-03-6825 was initiated then poppy husk was recovered from polythene bag in blue coloured kit lying inside the wooden box under the rear seat of truck. After making the arrangement of weighing, poppy husk was weighed then it comes to 4 kg. Parcel was prepared by putting the same along with polythene bag. Parcel was attested on spot by me with my seal AS. Sample seal was prepared separately. Recovered poppy husk weighing 4 kg was taken into police custody through separate memo. Seal after use was handed over to ASI Ranjit Singh 120/HPR. The documents regarding ownership were recovered from the dashboard of truck No. JK- 03-6825 which were taken into police custody as evidence through separate memo. Truck was also taken into police custody as an evidence through separate memo. Accused driver Sanjiv Kumar @ Sanju, Sudesh Kumar @ Sheesha, Sukhpal @ Ronki, Satish Kumar @ Banti have committed the offence u/s 15/22-61-85 of NDPS Act for

keeping 473 grams of intoxicating powder and 4 kg of poppy husk. Upon which, after recording the ruga is being sent to police station for registration of case through HC Iqbal Singh No.232/HPR. After registering the case, FIR number be intimated. Control room be informed through wireless message. Special reports be issued. Myself ASI along with fellow officials is busy in investigation on the spot. Sd/-Amarjit Singh ASI PS Tanda dated 01.02.2020. Today in the area of GT Road T-point Bijli Ghar, Tanda at 9:50 PM.”

SUBMISSIONS

ON BEHALF OF THE PETITIONER:

3. It is contended by the counsel for the petitioner that the allegations against the petitioner in the present case are totally false. The police did not make strict compliance of the mandatory provisions of Sections 42 and 50 of the NDPS Act. The alleged recovery is doubtful as the same did not take place before any Gazetted Officer or a Magistrate. It is further contended that the petitioner is not having good health being a patient of HBV positive, hypertension, Diabetes, Angina, coronary artery disease, single vessel disease, due to which he was admitted in Capitol Hospital, Jalandhar. Due to the ill-health, petitioner was granted interim bail for 15 days by the lower court vide order dated 10.01.2023 for treatment, and his bail was extended for one and half month for surgery of Hernia and subsequently it was extended twice on 13.04.2023 and 28.04.2023 but his prayer for further extension of bail was declined and as a result, he absented before the Court due to his illness and his bail/surety bonds were ordered to be forfeited and he was declared Proclaimed offender vide order dated 18.01.2024. However, the petitioner surrendered before the Court on 18.07.2024 and filed another application for interim bail on medical grounds

whereupon medical report of the petitioner was called for from the jail authorities and petitioner was found to be a patient of HBV positive, Hypertension, Type-II Diabetes Mellitus, Chronic Smoker, Chronic Alcoholic, IHD with Post PCI, LCX, effort Angina, Drug Defaulter, Coronary Artery Disease single Vessel Disease, Patient Stent in LCD, as such, the learned Court below did not consider the same while declining the application for interim bail. Therefore, the petitioner's prayer may be allowed and he may be released on interim bail for one month on medical grounds for treatment.

Notice of Motion

ON BEHALF OF RESPONDENT-STATE:

4. On the asking of the Court, Mr.Jaspal Singh Guru, Assistant Advocate General, Punjab, who is present in Court, accepts notice on behalf of the State and submits that the petitioner is alleged to have been involved in drug trafficking pertaining to joint recovery of 160 gms of intoxicant powder having active salt Alprazolam, and 4kgs poppy husk from truck bearing registration no. JK-03-6825 apart from individual recovery of contraband 170 gms containing active salt Alprazolam. Further, he was earlier also granted interim bail by the learned lower Court but he did not surrender back to the jail authorities on the expiry of bail period. As such, there is every possibility that the petitioner will either repeat the same conduct or will abscond trial, if released on interim bail, therefore, his prayer made in this petition is liable to be rejected.

5. Heard learned counsel for the parties at length.

ANALYSIS AND CONCLUSION

6. Be that as it may, after considering the submissions made herein above and on perusal of the assertions made in the petition as well, this court is of the firm view that after rejection of his application for extension of interim bail on 18.01.2024, did not surrender before the jail authorities immediately rather surrendered before the learned trial Court on 18.07.2024 and moved another bail application to seek interim bail for 10 days, which has been declined by the learned trial Court, vide order dated 14.08.2024. Therefore, the present 2nd bail application has been moved before this Court by the petitioner.

The conduct of the petitioner in filing petitions repeatedly one after the other and the bail applications before the learned trial Court, as referred above, goes to show that the petitioner's intention and motive is to prolong the trial to its maximum on one pretext or the other.

Moreso, in ***Ram Govind Upadhyay versus Sudarshan Singh, (2002) 3 SCC 598***, it has been observed as under:

“3. Grant of bail though being a discretionary order — but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the court and facts, however, do always vary from case to case. While placement of the accused in the society, though may be considered but that by itself cannot be a guiding factor in the matter of grant of bail and the same should and ought always to be coupled with

other circumstances warranting the grant of bail. The nature of the offence is one of the basic considerations for the grant of bail — more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter.”

7. In view of the seriousness of the allegations, the present petition fails and the same is hereby ordered to be dismissed as this Court does not find any justifiable ground to accept the prayer of the petitioner, made in this petition. However, the learned trial Court is directed to conclude the trial expeditiously preferably, within three months from the receipt of a copy of this order.

06.09.2024
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(SANDEEP MOUDGIL)
JUDGE

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