

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M-47397-2023 (O&M)
Date of decision : 13.03.2024

Sharda @ Sharda Devi

..... Petitioner

versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Amardeep Singh, Advocate
for the petitioner.

Mr. Jaswinder Singh Arora, DAG, Punjab.

PANKAJ JAIN, 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.446 dated 25.11.2022, registered for the offences punishable under Section 22 of NDPS Act, 1985 at Police Station Goindwal Sahib, District Tarn Taran.
2. Learned counsel for the petitioner contends that it is a case of false implication and all the proceedings took place while sitting in the police station. The perusal of memo i.e. consent memo, arrest memo and recovery memo already bear the FIR number mentioned above.
3. Counsel for the petitioner further argues that the petitioner has already undergone incarceration for more than 01 year. Charges were framed on 15.05.2023. The petitioner has no other criminal antecedents.

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

5. The issue of details of FIR already mentioned on the recovery memo came for consideration before Division Bench of this Court 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 2021*** 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

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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.

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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-

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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.

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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. In the present case the most material witness i.e. the gazetted officer who is stated to be witness to whole of the recovery in his testimony has admitted certain facts which put whole of the prosecution under reasonable doubt.

8. Keeping in view the aforesaid facts and circumstances of the present case, the instant petition deserves to be 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 during the trial.*
- (iii) The petitioner shall not absent herself on any date before the trial.*
- (iv) The petitioner shall not commit any offence similar to the one alleged in the present case.*
- (v) The petitioner shall deposit her passport, if any with*

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the trial Court.

- (vi) The petitioner shall give her cellphone number to the police authorities and shall not change her cell-phone number without permission of the trial Court.*
- (vii) The petitioner shall not in any manner try to delay the trial.*

9. In case of breach of any of the aforesaid conditions and those which may be imposed by the Trial Court, the prosecution shall be at liberty to move cancellation of bail of the petitioner.
10. Ordered accordingly.
11. Needless to say that anything observed herein shall not be construed to be an opinion on the merits of the case.
12. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

13.03.2024
Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No