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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.50615 of 2023 (O&M)

Date of decision : 24.01.2024

Pawan Singh

..... Petitioner

versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

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

Mr. Iqbal Singh Mann, DAG, Punjab.

PANKAJ JAIN, J. (ORAL)

1 This petition has been filed under Section 439 Cr.P.C. for grant of regular bail in case F.I.R. No.31 dated 21.02.2023 registered under Sections 22/61/85 of NDPS Act at Police Station City Sri Muktsar Sahib, District Sri Muktsar Sahib.

2 Custody certificate has been filed. The same is taken on record.

3 Learned counsel for the petitioner relies upon order dated 10.01.2024 passed in CRM-M-52735-2023, whereby co-accused Sunil @ Kala has been granted regular bail observing as under

“As per the contents of the FIR it has been alleged as under:-

“To, the Station House Officer, Police Station City Sri Muktsar Sahib, Jai Hind, today myself ASI along with CT Sukhvire Singh No.333/S.>S, PHG Phulbag Singh No. 23593 L/PHG Krishna Devi No. 11487 on private car being driven by myself ASI were present at Adrash Nagar, Bara Gujjar road Sri Muktsar Sahib for patrolling and special search operation. The police party was doing patrolling as the complaints against the persons using and selling intoxicant material, are being received from the general public, then on looking the police party, some persons standing in a vacant plot, in which the grass etc. was standing, tried to run from there then myself ASI has apprehended them with the

help of associate officials and asked their whereabouts, then one person has stated his name as Pawan Singh son of Kuldeep Singh resident of Gandhi Nagar, Chiman Lal Sharma Wali Gali, Sri Muktsar Sahib and second has stated his name as Balwinder Singh @ Billa son of Kala Singh resident Gandhi Nagar, Chiman Lal Sharma Wali Gali, Sri Muktsar Sahib and third person has disclosed his name as Sunil @ Kala son of Surinder Singh resident of Bara Gujjar road little flower Wali Gali Sri Muktsar Sahib. The said persons were having two spoons on which some flammable material was affixed and the strips of some tablets are scattered there, it seems that these are intoxicant tablets. Myself ASI has local rank, therefore I cannot take any action under NDPS Act, therefore any Regular NGO be sent to the spot. This information is being sent to the Police Station by the hand of PHG Phulbagh Singh Station, NO. 23593. Today in Police Station, on receiving of above said information Ruqa in the Police Station, Rapat NO. 30 entered into Rojnamcha, original Ruqa along with copy of Rapat is taken by myself ASI and along with PHG carrying investigating Kit, laptop, printer and torch in compliance with section 42 of NDPS Act, reached at the spot, where ASI Surjit Singh No. 03/S.M.S. along with CT Sukhvir Singh NO.333/S.M.S, L/PHG Krishna Devi NO.11487 and the persons apprehended by them were met at the spot. ASI Surjit Singh No.06/S.M.S has informed me about the facts and tried to join any public witness in the police party but due to late night hours, everybody shown their helplessness. Therefore myself has informed the said young men having Hindu personality, about my identity and said that my name is Balwinder Singh, ASI and I am posted in Police Station City Sri Muktsar Sahib, I am in uniform and my name plate is affixed on my uniform. After informing them about my identity, I asked from said young men about their whereabouts then Pawan Singh son of Kuldeep Singh resident of Gandhi Nagar, Chiman Lal Sharma Wali Gali, Sri Muktsar Sahib and second has stated his name as Balwinder Singh @ Billa son of Kala Singh resident Gandhi Nagar, Chiman Lal Sharma Wali Gali, Sri Muktsar Sahib and third person has disclosed his name as Sunil @ Kala son of Surinder Singh resident of Bara Gujjar road little flower Wali Gali Sri Muktsar Sahib. Thereafter myself ASI has informed said Pawan Singh, Balwinder Singh@ Billa and Sunil Kumar @ Kala that the strips of tablets are scattered near to them and you have two spoons on which it seems that intoxicant material is affixed, therefore we have doubt that there is more intoxicant material with you, therefore your search is required to be conducted by you have legal right that you can get done your search through any Gazetted officer or Magistrate, who can be called here or you can be taken to them. The Pawan Singh, Balwinder Singh@ Billa and Sunil Kumar @ Kala have said in one trust voice that we have you, you can conduct upon our search. Therefore myself ASI

has prepared notices under 'section 50 of NDPS Act, which are signed by Pawan Singh, Balwinder Singh@ Billa and Sunil Kumar @ Kala and witnesses have also appended their signatures. Hereafter myself ASI has conducted the search of Pawan Singh, Balwinder Singh@ Billa and Sunil Kumar @ Kala but during search, no intoxicant material is recovered from them, but a currency note of Rs. 100/- found from the right side Jean pant of Pawan Singh, currency notes of Rs. 120/- found from the right side pocket of Balwinder Singh @Billa and currency notes of Rs. 140/- are recovered from the right side pocket of Jean pant of Sunil @ Kala. Apart from it, no other ornament or mobile phone is recovered from them. Thereafter myself ASI has picked up the strips of intoxicant tablets thrown by them on the ground and counted them, then total 9 strips found, are 8 strips containing 10-10 tablets were each and one strip containing 06 tablets is found, from which four tablets were taken out, the make of said tablets is Etizolam @ Escitalopram Tablets Restifill-Et batch No. PT20209, MEG Feb.2021, Exp. Jan.2023, MRP Rs. 135 IAT/10tabs and two spoons are recovered on which some burned material was affixed and lighter thrown by them is found from one side. The said spoons wrapped in simple paper, light and recovered intoxicant material have been put into a cloth bag and turned the same into parcel and said parcel sealed by myself ASI with my seal bearing impression BS and also prepared sample of seal form 29-M. After using seal the same is handed over to ASI Surjit Singh NO. parcel items of 06/S.M.S. The said duly recovered and sealed intoxicant tablets, spoons and lighter and form 29-M have been taken into police possession through seizure memo and signature of witnesses are taken on the memo. Above Pawan Singh, Balwinder Singh @ Billa and Sunil Kumar @ Kala have also appended their respective signatures on the memo. Pawan Singh son of Kuldeep Singh resident of Gandhi Nagar, Chiman Lal Sharma Wali Gali, Sri Muktsar Sahib, Balwinder Singh @ Billa son of Kala Singh resident Gandhi Nagar, Chiman Lal Sharma Wali Gali, Sri Muktsar Sahib and Sunil @ Kala son of Surinder Singh resident of Bara Gujjar road little flower Wali Gali Sri Muktsar Sahib have committed offence under section 22/61/85 of NDPS Act by keeping total 86 intoxicant tablets 2 spoons on which some burnt material is affixed and one light, therefore after writing Ruqa, the same is being sent to the Police Station by the hand of PHG Phulbagh Singh 'No. 23593 for registration of case against Pawan Singh son of Kuldeep Singh resident of Gandhi Nagar, Chiman Lal Sharma Wali Gali, Sri Muktsar Sahib, Balwinder Singh @ Billa son of Kala Singh resident Gandhi Nagar, Chiman Lal Sharma Wali Gali, Sri Muktsar Sahib and Sunil @Kala son resident of of Surinder Singh Bara Gujjar road Flower Wali Gali Sri Muktsar Little Sahib. After register case, number of the same be intimated. Special reports be sent to the Ilaga Magistrate and senior officers. PCR be intimated. Myself

ASI along with associate officials busy for investigation at the Balwinder Singh, ASI, spot. Sd/- Police Station City Sri Muktsar Sahib dated 21.02.2023”

3 *Learned counsel for the petitioner submits that the gravamen of the allegations in the FIR itself shows that the contraband alleged to have been recovered cannot be connected to the petitioner. He submits that as per the prosecution, when the police party arrived they saw certain persons standing having 2 spoons on which some flammable material was affixed and the strips of the tablets were scattered on the ground. Apart from that it is contended that all the strips were beyond the expiry date and thus it will be debatable as to whether it would fall within the ambit of psychotropic substance and whether the petitioner can be said to be in conscious possession thereof.*

4 *Custody certificate has been filed. The same is taken on record. The petitioner is behind bars for 10 months & 20 days and has no past criminal antecedents. Investigation already stands concluded. Challan stands presented.*

5 *Learned State counsel on instructions from ASI Dalbir Singh is not in a position to dispute the aforementioned factual assertions based on record.*

6 *I have heard learned counsel for the parties and have gone through the records of the case.*

7 *Keeping in view the incarceration suffered by the petitioner, nature of allegations levelled against him, his clean antecedents and the fact that the challan already stands presented, the present petition is allowed. The petitioner is ordered to be released on bail on his 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 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 police authorities and shall not change his cell-phone number without permission of the trial Court.*
- (vii) The petitioner shall not in any manner try to delay the trial.*

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

4 *Learned counsel for the petitioner submits that the petitioner has been in custody for 11 months & 4 days.*

5 *Learned State counsel on instructions from Investigating Officer is not in a position to dispute the aforementioned factual assertions*

based on record.

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

7 Without commenting on the merits of the case by granting parity with co-accused and considering the incarceration suffered by the petitioner, the present petition is allowed. The petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the Ld. Trial Court/Duty Magistrate, concerned.

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

(PANKAJ JAIN)
JUDGE

24.01.2024
Pooja sharma-I

Whether speaking/reasoned	Yes
Whether Reportable :	No