

218 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-54043-2023
Date of decision : 28.02.2024

DARSHNA RANIPetitioner

Versus

STATE OF PUNJABRespondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. K.S. Ahluwalia, Advocate
for the petitioner.

Mr. J.S. Arora, DAG, Punjab with
ASI Vipam Kumar.

PANKAJ JAIN, J. (ORAL)

This petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case F.I.R. No.76 dated 08.05.2023 registered for the offences punishable under Sections 21/29/25/61/85 of Narcotic Drugs and Psychotropic Substances Act at Police Station Sadar Jalandhar, District Police Commissionerate Jalandhar.

2. As per the contents of the FIR it was alleged as under:

“SHO PS. Sadar Jalandhar Commissionerate, Jalandhar, Jai Hind Today I SI along with ASI Nishant Singh no. 2165, ASI Nishan Singh no. 3007, HC Ranjit no. 2385, CT Nitin Tandon no. 1584 and CT Mandeep Singh no 2054, LCT Jaspreet Kaur no. 2022 along with her laptop and printer were traveling on our government car bearing no PB 08 DG 5897, which was being driven by ASI Kartar Singh no. 386 and for the purpose of

patrolling and checking of suspicious persons coming on private vehicles and holding Nakabandi at the T Point at Qadian, District Jalandhar and were present over there and from the outer side of the village one Car Swift Dzire bearing no. PB 08 EW 1600 was coming slowly and the same was driven by one boy and at the back side two ladies and one minor girl was seen sitting. He on seeing the police party in front of him became perplexed and stopped the car and tried to turn back but I SI on the basis of suspicion stopped the car and asked the driver of the car and the ladies who were sitting in the car by bringing them out and asked them about their name and address. The driver of the car disclosed his name as Happy son of Rajpal resident of Qadian District Jalandhar and the ladies disclosed their name as Arzoo wife of Vinod Kumar resident of house no 1307 Bhargo Camp Jalandhar and the second lady disclosed his name as Darshana Rani wife of Balbir alias Kala resident of Qadian District Jalandhar and then SI gave a notice to the boy and the ladies under section 50 of the NDPS Act one by one and told them that he is having suspicion that you and the car bearing no. PB 08 EW 1600 make Swift Dzire, which is in your possession is having some intoxicant substance Because of the said reason you and your car needs to be searched but you are having a legal right that you can get your and your car searched from Magistrate or Gazetted Officer. Efforts can be made to call them at the spot. On this Happy Arzoo and Darshana Rani all of them after consulting with each other told that they want to get their and their car bearing no. PB 08 EW 1600 make swift dezire searched from some Gazetted Officer. On this SI from his phone no. 9915241600 called on the phone no. 96460101117 of Harshpreet Singh PPS (ACP) camp and requested him to come at the spot. After a period of 30 minutes Harshpreet Singh PPS (Camp) Jalandhar reached alongwith his guard on his government car bearing no. PB 08 DS 1492 make Bolero which was being driven by HC. Gurnam Singh at the spot. He disclosed his identity to Happy Arzoo and Darshana Rani and told them that he is Harshpreet Singh PPS (ACP) Cantt. Jalandhar and he is a Gazetted Officer of Punjab Government. Then ACP served notice under section 50 of NDPS Act to Happy

Arzoo and Darshna Rani one by one and told them that he is having suspicion that you and your car bearing no. PB 08 EW 1600 make swift Dzire is having some intoxicant substance. You and your car needs to be searched but you are having a legal right that you can get your and your car searched from a Magistrate or some other Gazetted officer. Efforts can be made to call them at the spot or you can be taken to them. Even efforts can be made to call them at the spot. On this Happy Arzoo and Darshna Rani after discussing with each other told him that they are having faith in the DSP. You can get our and our car bearing no. PB 08 EW 1600 make Swift Dzire searched. Then SI on the instructions and directions of ACP before conducting the search of Happy Arzoo and Darshna Rani and their car bearing no. PB 08 EW 1600 make Swift Dzire efforts were being made by him to join independent witness from the public but everyone showed their helplessness. Then I SI on the instructions and directions of ACP and in the presence of other police officials conducted the search of Happy Arzoo and Darshna Rani and their car bearing no. PB 08 EW 1600 make Swift Dzire and then from the dashboard of the car bearing no. PB 08 EW 1600 make Swift Dezire, one black color polythene bag in which heroin was recovered and one weighing machine and Rs 5000 Indian Currency was recovered. Then SI weighed the heroin along with the polythene on the electronic weighing machine and the weight of the same came out to be 500 grams of heroin. The recovered 500 grams of heroin was being put in the same plastic polythene and then was put in a plastic box and a parcel of case property was prepared. The prepared case property parcel of plastic box of heroin weighing 500 gram and on which SI affixed his seat ML and ACP affixed his seal mark HS. Separate memo was being prepared, I SI after affixing his seat handed over to same to SI Nishan Singhno. 2165 and ACP kept his seat with himself. The prepared case property parcel plastic box of heroin weighing 500 grams having seal ML & HS along with electronic weighing machine and Rs 5000 Indian currency note and the recovered car bearing no. PB 08 EW 1600 make Swift Dzire without RC was taken into police possession vide separate

recovery memo. The same was attested by ACP. On the memo witness affixed their signature Happy Arzoo and Darshna Rani were keeping in their possession 500 grams of heroin have committed an offence under section 21/61/85 of NDPS Act. for registering the FIR ruqa of the same is being sent to the police station at the hand CT Mandeep Singh no. 2054 for the FIR. After registering the FIR the number be intimated at spot. Special reports be prepared and sent to Senior Police Officials and Illaqa Magistrate Control room may be intimated I SI along with other police officials are present at the spot. Sd/- Mohan Lal. SI Anti Narcotic Cell, Commissionerate Jalandhar dated 08/05/2023. Police proceedings.”

3. Counsel for the petitioner has relied upon the law laid down in the case of **Sujit Tiwari vs. State of Gujarat and another, 22020 AIR (Supreme Court) 667, Sahimina Biswas vs. The State of West Bengal, SLP (Crl.) No.12168/2022 (arising out of impugned final judgment and order dated 07-11-2022 in CRM (NDPS) No.1305/2022 passed by High Court at Calcutta), dated 01.03.2023, 2023, Beant Singh vs. State of Punjab, SCC OnLine P&H 660, Kishore Bira vs. State of Odisha (BLAPL No.9629 of 2021 decided on 11.07.2022, Gurmukh Singh @ Gurmukh Singh @ Gagan vs. State of Punjab, 2020(3) R.C.R. (Criminal) 280 and CRM-M-26500-2023 titled as Andeep Singh vs. State of Punjab** decided on 30th of May, 2023, to submit that the petitioner was merely travelling in the car and cannot be attributed recovery. The petitioner is a first time offender and has no criminal antecedents.

4. Apex Court in the case of **Union of India through Narcotics Control Bureau, Lucknow vs. Md. Nawaz Khan, (2021) 10 SCC 100** held as under:

22. We shall deal with each of these circumstances in turn. The respondent has been accused of an offence under Section 8 of the NDPS Act, which is punishable under Sections 21, 27A, 29, 60(3) of the said Act. Section 8 of the Act prohibits a person from possessing any narcotic drug or psychotropic substance. The concept of possession recurs in Sections 20 to 22, which provide for punishment for offences under the Act. In *Madan Lal and Another v. State of Himachal Pradesh, (2003) 7 SCC 465* this Court held that

"19. Whether there was conscious possession has to be determined with reference to the factual backdrop. The facts which can be culled out from the evidence on record are that all the accused persons were travelling in a vehicle and as noted by the trial court they were known to each other and it has not been explained or shown as to how they travelled together from the same destination in a vehicle which was not a public vehicle.

20. Section 20(b) makes possession of contraband articles an offence. Section 20 appears in Chapter IV of the Act which relates to offences for possession of such articles. It is submitted that in order to make the possession illicit, there must be a conscious possession.

21. It is highlighted that unless the possession was coupled with the requisite mental element i.e. conscious possession and not mere custody without awareness of the nature of such possession, Section 20 is not attracted.

22. The expression "possession" is a polymorphous term which assumes different colours in different contexts. It may carry different meanings in contextually different backgrounds. It is impossible, as was observed in *Supdt. &*

Remembrancer of Legal Affairs, W.B. v. Anil Kumar Bhunja [(1979) 4 SCC 274 : 1979 SCC (Cri) 1038 : AIR 1980 SC 52] to work out a completely logical and precise definition of "possession" uniform[ly] applicable to all situations in the context of all statutes.

23. The word "conscious" means awareness about a particular fact. It is a state of mind which is deliberate or intended.

[...]

26. Once possession is established, the person who claims that it was not a conscious possession has to establish it, because how he came to be in possession is within his special knowledge. Section 35 of the Act gives a statutory recognition of this position because of the presumption available in law. Similar is the position in terms of Section 54 where also presumption is available to be drawn from possession of illicit articles.”

What amounts to "conscious possession" was also considered in *Dharampal Singh v. State of Punjab, (2010) 9 SCC 608*, where it was held that the knowledge of possession of contraband has to be gleaned from the facts and circumstances of a case. The standard of conscious possession would be different in case of a public transport vehicle with several persons as opposed to a private vehicle with a few persons known to one another. In *Mohan Lal v. State of Rajasthan, (2015) 6 SCC 222*, this Court also observed that the term "possession" could mean physical possession with animus; custody over the prohibited substances with animus; exercise of dominion and control as a result of concealment; or personal knowledge as to the existence of the contraband and the intention based on this knowledge."

5. After going through records of the case and keeping in view the dictum of Section 54 of the NDPS Act and the fact that the petitioner was admittedly travelling in the car, this Court does not find any reason for grant of bail. Resultantly, the petition is dismissed.

February 28, 2024		(Pankaj Jain)
Dpr		Judge
	Whether speaking/reasoned	: Yes/No
	Whether reportable	: Yes/No