

2024.PHHC.135998



104

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-51203-2024
DECIDED ON: 18.10.2024

NIKHIL KAUSHAL AND ANTOHER
.....PETITIONERS

VERSUS

STATE OF PUNJAB
.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Shivam Vashisht, Advocate
for the petitioners.

SANDEEP MOUDGIL, J (ORAL)

1. Relief Sought

The jurisdiction of this Court under Section 482 of the BNSS, 2023 has been invoked seeking the concession, for the grant of anticipatory bail to the present petitioners in FIR No.64 dated 04.09.2023, under Sections 21 of NDPS Act, 1985 (Section 29 of NDPS added later on) registered at Police Station Singh Bhagwantpur, District Rupnagar.

2. Facts:-

The facts as narrated in the FIR reads as under:

To, the Station House Officer, Police Station Singh Bhagwantpur, Jai Hind, today myself ASI along with ASI Balvir Singh No. 572/R, Joginder Singh No. 530/R, HC Gurjit Singh No. 913/R, C-II Parvinder Singh No. 380/R on government car bearing registration No. PB65-AW- 5132being driven by ASI Gurchain Singh No. 1010/R are present

on barricading T-point of Behrampur Zimidara at main highway CRM-M-32937-2024 2 road in connection with patrolling and search of smugglers then at about 4.00 PM, a car colour white seen coming from village Behrampur Zimidara side and myself ASI has given signal to stop the said car then the driver of car has suddenly stopped his car and tried to turn back but due to narrow road, he could turn his car back, therefore myself ASI along with associate officials has apprehended the driver of said car. In the meantime, driver of said car has make done the driver side of his car and thrown a heavy transparent polythene in the shrubs on the side of road and Heroin was clearly visible from the said polythene. Myself ASI has noted down the registration number of said car as PB43-F-0853 make I-10 Grand colour white, thereafter myself ASI has asked from the driver of car his whereabouts then he disclosed his name as Maninder Singh@ Mani son of Pargat Singh resident of house NO. 794, Type-I/I Nouhon Colony, Police Station Sadar Rupnagar and the person sitting on the conductor seat of car has stated his name as Sandeep Singh@ Sandy son of Gurtej Singh resident of village Kaur Singh, District Mansa, at present resident of house No. 1700 Type-I, Nouhon Colony, Police Station Sadar Rupnagar. Then myself ASI has asked them about the transparent polythene bag thrown by them but both the above said persons could not give any satisfactory reply. Thereafter myself ASI has picked up the transparent polythene bag thrown by Maninder Singh@ Mani and Sandeep Singh Sandy from their car and on checking the said transparent polythene bag, Heroin recovered from it. On weighing of above said recovered Heroin on the mobile type weighing machine, then its weight is found to be 126 Grams of Heroin along with polythene. Myself ASI has put said Heroin in a plastic box and after putting said plastic box into a cloth, turned the same into parcel and sealed the parcel by myself ASI with my seal bearing impression KS and also prepared the sample of seal and after using seal, the same has been handed over to AS Balvir Singh NO. 572/R. The above said recovered 126 Grams of Heroin duly sealed with seal bearing impression KS and sample of seal have been taken into police

possession through memo. In CRM-M-32937-2024 3 this way, Maninder Singh @ Mani and Sandeep Singh@ Sandy above said have committed offence under section 21-61- 85 of NDPS act by keeping 126 grams of Heroin along with polythene, therefore the statement is being sent to the Police Station by the hand of C-ll Parvinder Singh NO. 380/R for the registration of case against above said Maninder Singh@ Mani and Sandeep Singh@ Sandy, after register case, number of the same be intimated. Officers and control room Rupnagar be intimated through wireless and special reports be issued”.

3. Contentions

On behalf of the petitioner:

Learned counsel for the petitioners contends that the petitioners have been nominated as accused on the basis of disclosure statement suffered by Malkiat Singh @ Malli, who was also nominated on the basis of disclosure statement made by other accused persons namely Maninder Singh @ Manni and Sandeep Singh @ Sandy, who were arrested on 04.09.2023. He further submits that the alleged contraband i.e., 126 grams of heroin was recovered from Maninder Singh @ Manni and Sandeep Singh @ Sandy, which is non-commercial nature, thereafter another recovery i.e, 270 grams of heroin has been planted upon Malkiat Singh @ Malli.

On behalf of respondent-State

4. Notice of motion.

On the asking of Court, Mr. Jaspal Singh Guru, AAG Punjab, accepts notice on behalf of respondent-State and vehemently opposes grant of anticipatory bail on the ground that 300 grams of heroin have been recovered in the present case, which fall under commercial quantity, therefore, the present petitioner does not deserve the concession of anticipatory bail at this stage.

5. Analysis

Considering the submissions made by learned counsel for the petitioner admittedly the contraband recovered is non-commercial in nature added with the fact that co-accused Malkiat Singh @ Malli has already been granted the concession of regular bail by this Court vide order dated 15.02.2024 passed in CRM-M-6937-2024 as far as the contention qua the quantity of contraband is concerned, this Court is sanguine of the fact that the prosecution has tried to collectively mention the recovery of contraband to make it commercial in nature inasmuch as 126 grams of heroin was recovered from Maninder Singh @ Manni and Sandeep Singh @ Sandy on 04.09.2023, whereas another recovery was effected from Malkiat Singh @ Malli.

6. Decision

In the light of above, this Court has a doubt on the story of the prosecution at this stage as far as the quantity of the contraband is concerned, which would be a subject matter in the evidence to be led to establish as to how much and from whom the said contraband has been recovered and on that account it would be unjust to send the petitioner behind bars particularly in the light of dictum laid down in ***Dataram Singh vs. State of Uttar Pradesh & Anr. 2018(2) R.C.R. (Criminal) 131***, wherein “*bail is a rule and jail is an exception*”.

Hence, in view of the admitted set of circumstances before this Court, the petitioners are hereby directed to be released on anticipatory bail subject to joining the investigation and reporting to the Investigating Officer concerned within a period of 10 days from today, upon furnishing of personal/surety bonds to the satisfaction of Arresting/Investigating Officer.

The petitioners shall also abide by the terms and conditions as envisaged under Section 482(2) of BNSS of which are reproduced below :-

“When the High Court or the Court of Session makes a direction under sub-section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including-

- (i) a condition that the person shall make himself available for interrogation by a police officer as and when required;*
- (ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;*
- (iii) a condition that the person shall not leave India without the previous permission of the Court;*
- (iv) such other condition as may be imposed under sub-section (3) of section 480, as if the bail were granted under that section.”*

However, it is made clear that in case the petitioners do not comply with the aforesaid direction of joining the investigation within 10 days, the order passed by this Court today shall automatically, stand cancelled.

In the afore-said terms, the present petition stands allowed.

18.10.2024

Meenu

(SANDEEP MOUDGIL)
JUDGE

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