

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

I. CRM-M-59325-2023

Arshdeep Singh @ ArshPetitioner

Vs.

State of PunjabRespondent

II. CRM-M-51269-2023

Kulwant KaurPetitioner

Vs.

State of Punjab & OthersRespondents

Reserved On.: 01.02.2024
Pronounced On: 07.02.2024

CORAM: - HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: Mr. G.S. Bajwa, Advocate
for the petitioner.

Mr. Karunesh Kaushal, AAG, Punjab.

DEEPAK GUPTA, J.

This order shall dispose of two petitions titled above, as both of them pertain to same FIR.

2. In CRM-M-59325-2023 filed under Section 439 Cr.P.C., petitioner Arshdeep Singh @ Arsh prays for his release on regular bail in case FIR No.51 dated 13.09.2023 registered under Section 21, 29 of NDPS Act, 1985 registered at Police Station Mattewal, District Amritsar; whereas in CRM-M-51269-2023 filed under Section 482 Cr.P.C., petitioner Kulwant Kaur, the mother of Arshdeep Singh @ Arsh, prayed for directions to be issued to SSP, Amritsar Rural to constitute a Special Investigation Team for fair investigation.

3. Separate status reports have already been filed on behalf of respondent- State in both the cases.

4. As per the prosecution version, on 13.09.2023, SI/SHO Police Station Mattewal, District Amritsar along with other police officials was on regular checking at Village Nibarwind. Police party was checking the vehicles. A young person was found coming on a motorcycle from the side of Sadhpur, who at the sight of the police party tried to run away by taking U-Turn. He was apprehended and disclosed his name as Arshdeep Singh @ Arsh (*petitioner in CRM-M-59325-2023*). Suspecting that he could possess illegal substance, notice under Section 50 of the NDPS Act was served upon him informing him of his legal right to get his search conducted in the presence of Gazetted Officer or any Magistrate. Petitioner opted to get his search conducted in presence of the Gazetted Officer. Necessary memo was prepared. DSP Sub-Division Majitha was requested on his mobile to reach the spot. After sometime, DSP Sub-Division Majitha along with his police party came to the spot, who was apprised of the facts and who also served notice under Section 50 of the NDPS Act to the petitioner. As the petitioner reposed faith in DSP Sub-Division Majitha, necessary consent memo was prepared and then on the direction of DSP Sub-Division Majitha, search of petitioner was conducted. A transparent polythene bag was found from the left side of the waist of petitioner Arshdeep Singh @ Arsh and on checking, it was found to contain Heroin. Upon weighing, its weight was found to be 510 grams. After making necessary compliances, recovery memo was prepared. Petitioner along with recovered property was produced before the Court, where samples were drawn

and sealed. One of the sample parcels was sent to the RTFSL Amritsar and the report confirmed the recovered substance to be Heroin. Petitioner Arshdeep Singh @ Arsh also suffered disclosure statement that he had purchased the contraband from one Vardan. Section 29 of the NDPS Act was added and said Vardan was arrested on 07.11.2023. After completion of investigation final report under Section 173 Cr.P.C. was presented in the Court on 29.11.2023.

5. It is contended on behalf of petitioner Arshdeep Singh @ Arsh that he has been falsely implicated; that provisions of Section 50 of the NDPS Act were not complied, as no Gazetted Officer was called at the spot; that no independent witness was joined; that petitioner had earlier moved a petition before this Court for constituting a Special Investigation Team by filing CRM-M-51269-2023, in which notice of motion has been issued; that his mother also moved various representations to the SSP, Amritsar Rural in this regard; that petitioner is in custody since sufficient long time; that trial may take time to conclude and so, he be allowed bail.

6. In CRM-M-51269-2023, Smt. Kulwant Kaur, the mother of Arshdeep Singh pleaded that on 13.09.2023 at about 12:00 p.m., her son had gone to purchase a burger on his motorcycle at Adda Daddu Anna. After about half an hour, elder son of the petitioner i.e. Satpal Singh received a call from his friend that police had picked up Arshdeep Singh from Royal Bakery along with two young persons namely Jagdeep Singh @ Jagga and Arshdeep Singh son of Ajaib Singh. The son of the petitioner namely Vishaldeep Singh received call from Arshdeep that he was at Police Station Mattewal and that case has been registered against him. Petitioner along with her father and

others went to police station but her son Arshdeep Singh was not allowed to meet them. She later on came to know that a false case has been registered against her son. Thus, petitioner prayed for constituting a Special Investigating Team to conduct fair investigation.

7. The reply filed on behalf of respondent- State would reveal that representation of the petitioner was duly enquired into by Superintendent of Police, PBI, District Amritsar Rural and it was found that prior to registration of the FIR, no other FIR had been registered. The present FIR was registered as son of the petitioner was caught with 510 grams of Heroin. It was further found that no mobile was recovered from the possession of Arshdeep Singh @ Arsh at the time of his apprehension. The call detail records of Arshdeep Singh @ Arsh, besides Jagdeep Singh and Arshdeep son of Ajaib Singh were also collected and it was found that Arshdeep Singh @ Arsh, the son of the petitioner Kulwant Kaur was rightly arrested. The allegations made in the representation were found false and so, the same was consigned.

8. It has been argued on behalf of petitioner Arshdeep Singh @ Arsh that false implication of the petitioner would be evident from the fact that in the FIR (Annexure P-1) itself, it is mentioned that substance as recovered from the petitioner was Heroin. Learned counsel contends that by that time, sample had not been sent to the FSL and so, police could not know that the recovered substance was Heroin.

9. Replying the aforesaid contention, learned State counsel submits that with large experience, the police officials can make out about the nature of the substance and that sample is sent to the FSL to confirm the nature of the

substance. Learned State counsel also submits that it will be a matter of evidence that on what basis substance was mentioned in the FIR to be Heroin. Prayer is made for rejecting the petition by pointing out that recovered substance falls in the commercial category.

10. I have considered submissions of both the sides and have perused the record.

11. Heroin more than 250 grams falls in the commercial category. Thus, contraband to the extent of more than double the commercial category, has been allegedly found from the possession of the petitioner Arshdeep. It will be a matter of evidence as to on what basis the police official had mentioned the recovered substance to be Heroin in the FIR. However, at this stage, merely on this basis, false implication of the petitioner cannot be assumed as is alleged. The contention of petitioner Arshdeep Singh that no compliance of Section 50 of the NDPS Act was made is also contradicted by the Status report, as per which, after recording the option given to the petitioner, DSP Sub-Division Majitha was called at the spot, who also sought consent of the petitioner and when the said petitioner reposed faith in him, then the search was conducted. Besides, the custody period of the petitioner is only 04 months and 17 days as per the custody certificate placed on record. Trial is yet to take place.

12. The representation as made by the mother of petitioner Arshdeep Singh i.e. Smt. Kulwant Kaur (petitioner in CRM-M-51269-2023) was duly enquired by an officer of the rank of Superintendent of Police and the allegations made therein were found to be false. This Court does not find any

reason for constitution of any Special Investigation Team.

13. Having regard to all the aforesaid facts and circumstances, but without commenting anything further on the merits of the case, this Court is not inclined to release the petitioner Arshdeep Singh @ Arsh on regular bail. As such, his petition i.e. CRM-M-59325-2023 is hereby dismissed.

14. Similarly, this Court finds no justification for constitution of any Special Investigation Team, as the representation made by petitioner Smt. Kulwant Kaur has already been enquired into by the officer of the rank of Superintendent of Police and the same has been found to be false. As such, petition i.e. CRM-M-51269-2023 is also hereby dismissed.

(DEEPAK GUPTA)
JUDGE

February 07, 2024
Neetika Tuteja

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No