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**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

Sr. No.214

CRM-M-57024-2024 (O&M)

Date of decision : 13.12.2024

Sukhwinder Singh @ Tika

..... Petitioner

VERSUS

State of Punjab

..... Respondent

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Mr. APS Rehan, Advocate for the petitioner.

Mr. Vinay Kumar Malhotra, DAG, Punjab.

KIRTI SINGH, J. (Oral)

The jurisdiction of this Court under Section 483 of BNSS, 2023 has been invoked for grant of regular bail to the petitioner in case FIR No.114 dated 02.06.2023, under Sections 15 of NDPS Act, 1985 (Section 29 of NDPS Act added later on), registered at Police Station Samrala, Police District Khanna, District Ludhiana.

2. The translated version of FIR is reproduced below:-

“Officer In-charge, PS Samrala, Jai Hind, today I SI along with ASI Harjinder Singh 665/Khanna, HC Satvir Singh 774/Khanna, L/HC Manju Kaur 830/Khanna and PHG Jagtar Singh 29033 were patrolling on a private car in connection with search of bad persons and vehicles and were present at the bridge of water course near ITI and at about 6 p.m. a secret informer came present and informed me SI that Gurjeet Singh alias Jeeti son of Ram Lal, resident of village Rohle, PS Samrala and Amanjot Kaur alias Sony wife of Palwinder Singh, resident of Adarsh Nagar, Samrala, PS Samrala, district Ludhiana are friends and both of them deal in bringing poppy husk from other states in heavy quantities in their Scorpio car PB-65-AX-7529 and sell the same in the areas falling under police station Samrala and today also both of them have brought heavy quantity of poppy husk in their above-mentioned Scorpio car. It was further informed that both of them are

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present in the house of above mentioned Amanjot Kaur alias Sony at Adarsh Nagar, Samrala and both of them are about to leave for selling the poppy husk at various places and in case a raid is conducted now both of them can be arrested along with heavy quantity of poppy husk and their Scorpio car. The information appeared to be reliable hence, I SI along with other members of the police party left for the house of above mentioned Amanjot Kaur @ Sony and at about 6:10 p.m. when the police party was about 40/50 meters away from the house of Amanjot Kaur @ Sony situated at the place disclosed by the secret informer, the Scorpio car as disclosed by the secret informer was seen coming which was being driven by a sikh person and a woman was sitting on co-driver's seat. I SI brought my car in front of the said Scorpio car and I along with other members of the police party made the persons travelling in the said Scorpio car to get out of the same and enquired about their names and addresses etc. The person who was driving the Scorpio car disclosed his name as Gurjeet Singh alias Jeeti son of Ram Lal, resident of Rohle, PS Samrala whereas the women who was sitting on co- driver's seat disclosed her name as Amanjot Kaur alias Sony wife of Palwinder Singh, resident of Adarsh Nagar, Samrala, PS Samrala, district Ludhiana. Thereafter, I SI while apprising above mentioned Gurjeet Singh alias Jeeti and Amanjot Kaur alias Sony about their legal rights under section 50 of the NDPS Act, told them that my name is SI Joginder Singh 313/Khanna and I am posted at police station Samrala as investigating officer and I am wearing my uniform which is bearing my name tag. I further disclosed them that I have suspicion of some intoxicating substance in their possession therefore their personal search and search of their car is to be conducted but they have got a legal right to get their personal search and search of their car conducted in presence of a gazetted officer or a magistrate who can be called at the spot or they can be taken before a gazetted officer or a magistrate. On this both of them replied that they want their search conducted from a gazetted officer. Hence, I SI prepared a separate non-consent memo of above mentioned Gurjeet Singh alias Jeeti and Amanjot Kaur alias Sony and the same was signed by both of them and the witnesses. Then, I SI at about 6:35 p.m. made a phone call to Sh. Waryam Singh, PPS, Deputy Superintendent of Police, Sub Division Samrala from my mobile no. 9981476330 on his mobile number 9592914028 and made a request asking him to reach at the spot and at about 6:45 p.m. Sh. Waryam Singh PPS, Deputy Superintendent of Police, Sub Division Samrala along with his gunman and staff came on a government vehicle Bolero PB 10 FV 0476 the driver of which was HC Chaman Lal 593/Khanna, who while disclosing his identity to above mentioned Gurjeet Singh alias Jeeti and

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Amanjot Kaur alias Sony told them that his name is Waryam Singh and he is posted as Deputy Superintendent of Police, Sub Division Samrala and he is wearing his uniform which is having his name tag and he is a gazetted officer of Punjab government. He further apprised them that there is suspicion of some intoxicating substance in their possession or in their Scorpio car PB- 65-X-7529 and therefore their personal search and search of their Scorpio car is to be conducted but they have got a legal right to get their search and search of their car conducted from some other gazetted officer or a magistrate and if they so require another gazetted officer or a magistrate can be called at the spot or they can be taken before a gazetted officer or a magistrate. On this above mentioned Gurjeet Singh alias Jeeti and Amanjot Kaur alias Sony both replied in one voice that they have full faith on him and he can conduct their personal search and search of their Scorpio car. Hence, separate consent memo of both Gurjeet Singh alias Jeeti and Amanjot Kaur alias Sony were got prepared by DSP Sh. Waryam Singh through me St, which were signed by both of them and by the witnesses. Thereafter efforts were made to join a witness from the public before conducting their personal search and search of the Scorpio car and one Malkeet Singh son of Buta Singh resident of Kamal colony, Samrala who was passing through on a bicycle agreed to become a witness to the search proceedings and was joined with the police party. Thereafter, in presence of the witnesses and as per the instructions given by DSP Sh. Waryam Singh, firstly search of above mentioned Gurjeet Singh alias Jeeti conducted as per procedure and thereafter keeping in view the privacy of Amanjot Kaur alias Sony, her personal search was conducted by L/ST Manju Kaur 830/Khanna and no incriminating substance was recovered from their personal search. Thereafter, search of above mentioned Scorpio car was conducted and from the boot of the said car 2 heavy plastic bags each tied with plastic strings were recovered which was checked and same were containing poppy husk. A computerized weighing machine was arranged at the spot and weight of the recovered polythene bags containing poppy husk was conducted and weight of the 1 plastic bag was 30 kg whereas weight of the 2nd plastic bag was 25 kg. Thereafter, I SI stamped both the plastic bags with my stamp 'JS' and DSP stamped the same with his stamp 'WS'. The sample stamp was prepared separately, I SI handed over my stamp to HC Harjinder Singh 665/Khanna after use but DSP kept his stamp with him. Thereafter, the above mentioned 2 plastic bags containing poppy husk duly stamped as JS + WS but taken into police possession through a separate recovery memo. Accused Gurjeet Singh alias Jeeti and Amanjot Kaur alias Sony were made to sign the memo and the witnesses also signed the same.

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The recovery memo was attested by the DSP and thereafter, I SI further searched the Scorpio car and from the dashboard of the same original RC was recovered as per which the said vehicle was registered in the name of accused Gurjeet Singh alias Jeeti. The above mentioned Scorpio car along with original RC was taken into police possession through a separate recovery memo and accused Gurjeet Singh alias Jeeti and Amanjot Kaur alias Sony were made to signed the same and the witnesses also signed the same. The accused namely Gurjeet Singh alias Jeeti and Amanjot Kaur alias Sony have committed offence punishable under sections 15-61-85 of the NDPS Act by keeping in their possession poppy husk. Hence, a ruqa has been written and is being sent to police station by hand PHG Jagtar Singh 29033 for registration of a case. A case be registered and its number be intimated. Intimation be given to the DCR Khanna and senior officers. Special reports be issued. I SI and other officials are conducting investigation at the spot. SD/- Joginder Singh ASI, PS Samrala, dated 0.06.2323. In the area of Adarsh Nagar, at 9:15 p.m."

3. Learned counsel for the petitioner submits that the petitioner has been falsely implicated in this case. He has been nominated as an accused on the basis of disclosure statements of the co-accused Gurjeet Singh @ Jiti and Amanjot Kaur. The petitioner has undergone an actual custody of 02 months and 17 days and there is one another criminal case registered against him in which he is on bail. He has placed reliance upon judgment rendered by Hon'ble Supreme Court in **Tofan Singh Vs. State of Tamil Nadu 2021 SCC Online SC 882.** The co-accused Gurjeet Singh @ Jiti has been granted the concession of bail vide order dated 16.07.2024 (Annexure P1) passed in CRM-M-11445-2024 and co-accused Amanjot Kaur has also been granted bail vide order dated 15.10.2024 (Annexure P2) passed in CRM-M-49527-2024 by the Coordinate Bench of this Court.

4. *Per contra*, learned State counsel has vehemently opposed the submissions made by the learned counsel for the petitioner. He has filed

custody certificate in Court today and the same is taken on record. As per

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custody certificate, the petitioner has undergone an actual custody of 02 months and 17 days and it is not disputed that there is one another criminal case pending against him, in which he is on bail. He on instructions from ASI-Avtar Chand submits that charges were framed on 25.11.2024 and out of 17 total prosecution witnesses, 04 witnesses have been examined and 03 have been given up. He further submits that in view of strict rigors of Section 37 of the NDPS Act and serious allegations against the petitioner, he is not entitled to the concession of regular bail.

5. Heard the rival submissions made by learned counsel for the parties.

6. The veracity of the allegations leveled against the petitioner shall be established during the course of the trial. The alleged recovery of contraband has been effected from the co-accused and the petitioner has been named in the present case on the basis of the disclosure statement of the co-accused and nothing has been recovered from the petitioner. Admittedly, petitioner has undergone an actual custody of 02 months and 17 days and there is one another case pending against him in which he is on bail. The investigation is complete. Charges were framed on 25.11.2024 and out of 17 total prosecution witnesses, 04 witnesses have been examined and 03 have been given up. Co-accused Gurjeet Singh @ Jiti has been granted the concession of bail vide order dated 16.07.2024 (Annexure P1) passed in CRM-M-11445-2024 and co-accused Amanjot Kaur has also been granted bail vide order dated 15.10.2024 (Annexure P2) passed in CRM-M-49527-2024 by Coordinate Bench of this Court. Therefore, further incarceration of the petitioner will not serve any purpose.

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7. As regards the submission of learned State counsel that petitioner is involved in other/one more criminal case(s), reference is placed upon the judgment of the Hon'ble Supreme Court in **Maulana Mohd. Amir Rashadi Vs. State of U.P. and another, 2012 (2) SCC 382** in which, it is held that the facts and circumstances of the present case are to be seen while deciding a bail application and the bail application of the petitioner cannot be rejected solely on the ground that the petitioner is involved in other/another case(s). The relevant portion of the said judgment is reproduced herein-below:-

“As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.”

8. Without commenting anything on the merits of the case, lest it may prejudice the trial, the present petition is allowed and the petitioner is ordered to be released on regular bail on his furnishing adequate bail/surety bonds to the satisfaction of the concerned learned trial Court/Duty Magistrate. The petitioner shall also abide by the following conditions:-

- (I) The petitioner will not tamper with the evidence during the trial.
- (II) The petitioner will not pressurize/intimidate the prosecution witness(s).
- (III) The petitioner will appear before the trial Court on the date fixed, unless personal presence is exempted.

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- (IV) The petitioner shall not commit an offence similar to the offence of which he is accused of, or for commission of which he is suspected.
- (V) The petitioner 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 or tamper with the evidence.

9. In case of breach of any of the above conditions, the prosecution shall be at liberty to move an application for cancellation of bail before this Court.

10. However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial Court would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

Pending miscellaneous application(s), if any, also stands disposed of.

(KIRTI SINGH)
JUDGE

13.12.2024
Ramandeep Singh

Whether speaking / reasoned	Yes/No
Whether Reportable	Yes/No