

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

210

CRM-M-63440-2024
DECIDED ON: 20.12.2024

GURDEV SINGH

.... PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. S.S.Sandhawalia Advocate
for the petitioner.

Mr. Chetan Sharma, DAG, Haryana..

SANDEEP MOUDGIL, J

1. RELIEF SOUGHT

The jurisdiction of this court has been invoked for second time under section 483 BNSS, 2023, for grant of regular bail in the case arising out of FIR No.895 dated 30.12.2023(Annexure P-1) registered under Section 18,61,85 of Narcotic Drugs and Psychotropic Substance Act, 1985(for short-NDPS Act) at Police Station Sadar Thanesar, District Kurukshetra.

2. The contents of the FIR read as under :-

“SHO P.S. Sadar Thanesar, 'Jai Hind'. Today on 30.12.2023, I, SI Naresh Kumar No.318A, ANC KKR alongwith HC Pawan Kumar No.757/KKR, Ct. Vikram Kumar No.98/KKR, Ct. Dinesh Kumar No.310/KKR and SPO Sanjay Kumar No.201/KKR in Government vehicle No.HR-07-GV-7171 Mark Bolero, whose driver was HC Vinod Kumar No.341/KKR was present at Anti Narcotic

Cell, Kurukshetra at around 07.30 PM, where at around 7.40 PM, a special informer came present at ANC KKR and met me, SI and gave secret information that Gurmeet Singh son of Gurdev Singh, r/o Village Barot, P.S. Ladwa, District Kurukshetra and Gurdev Singh son Kartar Singh, resident of Village Barot, P.S. Ladwa, District Kurukshetra, both are father and son, who go to Jharkhand with their canter No.HR-38-X-1036 and while returning, bring opium from Jharkhand and Bihar under the guise of loaded goods in their canter and do the work of supplying opium in Haryana, who is currently standing with their canter at a distance of about 100 meters from Umri Chowk on the road leading from Umri Chowk to Bhadson. If at present, the canter No.HR-38-X-1036 is raided and personal search is conducted on Gurmeet Singh and Gurdev Singh and their canter, then opium can be recovered from the possession of Gurmeet Singh and Gurdev Singh. On finding the information to be trustworthy and credible, after preparing notice u/s 42 of NDPS Act, Ct. Dinesh Kumar No.310/KKR was sent to Sh. Pradeep Kumar, HPS/DSP, Kurukshetra at around 8.00 PM. Thereafter, I, SI informed my accompanying officials about the information and alongwith accompanying officials, I reached on the road leading from Umri Chowk towards Bhadson, where a canter No.HR-38-X-1036 mark Eicher was seen standing on the side of the road. I, SI after knocking on the driver's side window of the said canter, asked to open the window and asked the name and address of the person who opened the window, who disclosed his name as Gurdev Singh son of Kartar Singh, resident of Village Barot, P.S. Ladwa, District Kurukshetra, who is the driver of the canter and the person sitting on the cleaner side, disclosed his name as Gurmeet Singh son of Gurdev Singh, r/o Village Barot,

P.S. Ladwa, District Kurukshetra. I, SI informed the above mentioned Gurdev Singh and Gurmeet Singh about my post and place of posting and requested them to remain sitting in the above mentioned canter and I, SI issued separate notices to the above mentioned Gurdev Singh and Gurmeet Singh u/s 50 of NDPS Act by informing that "I suspect the presence of narcotic substances in your possession and in your above mentioned canter. Therefore, it is very important to search you and your canter. But you have legal right that you can get yourself and your canter searched by any Magistrate or any Gazetted Officer. After preparing separate notices u/s 50 of NDPS Act, read over and explained to Gurdev Singh and Gurmeet Singh. Gurdev Singh and Gurmeet Singh appended their signatures on the said notices, whereas witnesses HC Pawan Kumar No.757/KKR and Ct. Vikram Kumar No.98/KKR also appended their respective signatures on the said notices. After thinking and understanding for some time, Gurdev Singh and Gurmeet Singh gave their reply to notice that they want to get themselves and their canter searched in the presence of a Gazetted Officer. Separate response to notice under Section 50 of NDPS Act were prepared, which were read over and explained to Gurdev Singh and Gurmeet Singh. Gurdev Singh and Gurmeet Singh appended their signatures on the said reply to notices, whereas witnesses HC Pawan Kumar No.757/KKR and Ct. Vikram Kumar No.98/KKR also appended their respective signatures on reply to said notices. Thereafter at around 8:40 PM, Sh. Pradeep Kumar, HPS/DSP Kurukshetra reached at the spot in government vehicle with his staff. At the same time, Ct, Dinesh Kumar No.310/KKR also arrived at the spot and handed over the copy of notice u/s 42 of NDPS Act to me, SI, which was received by DSP. I, SI informed

DSP about the situation and presented notice u/s 50 of NDPS Acts and reply to notice u/s 50 of NDPS Act before the DSP. Then DSP by marking seen on 4 notices U/s 50 of NDPS Act, appended his signature thereon. I, Si requested passersby for joining investigation but all of them expressed their legitimate compulsions and went away from the spot. Thereafter, Sh. Pradeep Kumar, HPS/DSP Kurukshetra informed about his name, rank and place of posting to above mentioned Gurdev Singh and Gurmeet Singh and conducted enquiry on them. Thereafter, DSP carried out search on me, SI regarding narcotics. During the personal search, no narcotic substance was recovered from me, SI. Personal search memo of recovering nothing was prepared. Suspects Gurdev Singh and Gurmeet Singh, 1, SI and witnesses HC Pawan Kumar No.757/KKR and Ct. Vikram Kumar No.98/KKR appended their respective signatures. Then, as per the orders of DSP, first of all, personal search of Gurdev Singh and then Gurmeet Singh was conducted at the spot regarding narcotic substance. During search, no intoxicant was found from the clothes worn by Gurdev Singh and Gurmeet Singh. Then search of the cabin of canter No.HR-38-X-1036 Mark Eicher was carried out. During search, from the driver's seat inside the cabin, a transparent polythene plastic bag colour white was found lying under the blanket on the long seat at the back. When I, SI opened it and checked it in front of DSP, a black colour substance was found inside. After opening the polythene in front of DSP and on checking, a black colour substance was found to be opium. Suspects Gurdev Singh and Gurmeet Singh also told when asked by me, SI that this is opium. Thereafter, on weighing the recovered, opium alongwith white colour transparent polythene plastic bag with the help of computerize weighing scale

available in the government vehicle, the total weight came to 2 kg 700 grams. I, Si prepared a parcel by putting the recovered opium alongwith polythene in a white colour cloth and sealed the parcel by affixing 2 seals with impression 'NK' and DSP affixed his seal on the parcel with impression 'PK/2'. Thereafter, I, SI prepared two sample seals separately and put my 2 seals with impression 'NK' on sample seals. Seal after use was handed over to HC Pawan Kumar No.757/KKR. DSP also affixed his seal impression 'PK/2' on sample seals. DSP after use of seal, kept the same with himself and attested the parcel of case property containing opium and both the sample seals. Then, on checking the dash board in the cabin of the canter, actual RC of the canter was recovered. According to which, the name of the owner of canter No.HR-38-X-1036 is Gurmeet Singh son of Gurdev Singh, resident of Village Barot, P.S. Ladwa, District Kurukshetra, which has been issued by the Registration Authority, Kurukshetra. Apart from above, 12 pipes and three iron angles were found loaded in the body of the canter and no intoxicant of any kind was recovered. Parcel of case property containing opium alongwith both sample seals, canter No.HR-38-X-1036 and the actual RC with loaded goods were taken in police possession as evidence vide separate seizure memo. Recovery memo was prepared. Gurdev Singh and Gurmeet Singh appended their signatures on the said recovery memo, whereas witnesses HC Pawan Kumar No.757/KKR and Ct. Vikram Kumar No.98/KKR also appended their respective signatures on the said memo. DSP attested the recovery memo by appending his signatures. Accused Gurdev Singh and Curmeet Singh have committed the offence under Section 18/61/85 of NDPS Act by keeping total of 2 kg 700 grams opium in their possession.

Therefore, after writing ruga, same is being sent to P.S. Sadar Thanesar, Kurukshetra by hand through SPO Sanjay Kumar No.201/KKR for registration FIR. After lodging FIR, number of which be informed. Special reports be issued to senior officers. Some another Investigating Officer be sent at the spot for conducting investigation. I alongwith accompanying officials am present at the spot with accused and case property. Today, From Umri Chowk towards Bhadson, Kurukshetra.”

SUBMISSIONS

ON BEHALF OF THE PETITIONER:

3. The counsel for the petitioner contends that the petitioner has been falsely implicated in the present case wherein nothing was found from his conscious possession added with the fact that his name has been roped in the instant case only on the basis of disclosure statement of co-accused. The contraband so recovered i.e. 2 Kg and 700 gm of Opium was under a blanket in the truck and the petitioner had no clue of that. The petitioner is a person of clean antecedent and by no stretch of imagination it can assumed that he might tamper with evidence if released on regular bail.

ON BEHALF OF RESPONDENT-STATE:

4. Learned counsel on behalf of the State submits that the petitioner is alleged to have been involved in drug trafficking along with co-accused pertaining to recovery of 2 Kg and 700 Gm of Opium, which was hidden under the blanket in the truck bearing registration no. HR-38-X-1036. The fact that the contraband recovered is of commercial quantity which is suffice enough to dismiss the present petition.

5. Heard learned counsel for the parties at length.

ANALYSIS AND CONCLUSION

6. Be that as it may, after considering the submissions made herein above and on perusal of the assertions made in the petition as well, this court is of the firm view that the contraband recovered is of commercial quantity and the increasing drug menace in the society does not compel this court to take a lenient view for the petitioner.

7. Moreso, in ***Ram Govind Upadhyay versus Sudarshan Singh, (2002) 3 SCC 598***, it has been observed as under:

“3. Grant of bail though being a discretionary order — but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the court and facts, however, do always vary from case to case. While placement of the accused in the society, though may be considered but that by itself cannot be a guiding factor in the matter of grant of bail and the same should and ought always to be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic considerations for the grant of bail — more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter.”

8. In view of the seriousness of the allegations, the present petition fails and the same is hereby ordered to be dismissed as this Court does not find any justifiable ground to accept the prayer of the petitioner, made in this petition.

9. However, it is made clear that the observations made hereinabove shall have no bearing in the mind of the trial Court while adjudicating the trial.

20.12.2024
Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*