



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-180-2025
DECIDED ON: 08.01.2025

SANDEEP SINGH

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

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

SANDEEP MOUDGIL, J (ORAL)

1. Relief sought

The jurisdiction of this Court has been invoked under Section 482 BNSS, 2023 for grant of anticipatory bail to the petitioner in FIR No.549, dated 07.12.2024, under Sections 21(B) and 29 of the NDPS Act and Section 61/85 of NDPS Act added later on, registered at Police Station Sadar Fatehabad.

2. Prosecution story setup in the present case as per the version in the FIR as under:-

“To, Managing Officer, Police Station Sadar Fatehabad, Jai Hind, Today on 07.12.2024, I ASI along with ESI/ASI Sher Singh No. 01/ Fatehabad along with EASI Bagga Singh No. 460/Fatehabad HC Satyabir No. 424/DDR along with vehicle Government No. HR-05G-5219 Driver EHC Radheshyam No. 789/Fatehabad Haryana State Narcotics Control Bureau Unit Fatehabad with investigation kit was present at village Mazra for prevention of drug trafficking when a secret informer met

and informed that Sukhwinder Singh son of Jeet Singh resident of Dhani Katakheti Road Bhirdana and Rajendra alias Aman son of Amrik Singh resident of Bhirdana district Fatehabad, who are involved in the business of selling narcotic substance heroin, both of them are arrested today. They are standing on motorcycle no. HR 22U 9914 Bullet colored black on Katakheti road from village Bhirdana near Johad with Heroin to sell it. You can immediately reach the spot and arrest Sukhwinder Singh and Rajendra alias Aman on motorcycle no. HR-22 U 9914 with Heroin. If the information is reliable, inform fellow officers and prepare a separate information under section 42 of NDPS Act and send it to EASI/HC Bagga Singh no. 460/ Sirsa's Police Station Sadar Fatehabad for information. Register the report, prepare the diary and inform the officers through the copy of the report. When ASI along with his fellow employees left in government vehicle, and reached near Johad on Katakheti road from village Bhirdana, the informer's place, there in an empty field along the road, two young boys were seen standing near a Bullet motorcycle. Seeing the presence of police in the official police vehicle, one of the young boys sat on the motorcycle and started it by kicking it, but the motorcycle did not start even after repeated kicking. The other young boy started running through the empty field towards the village. Hon'ble Sub Inspector suddenly stopped the vehicle and with the help of his fellow employee, controlled the young man sitting on the motorcycle, under whose supervision Hon'ble Sub Inspector and ESI/ASI Sher Singh No. left EASI Bagga Singh and EHC Radhey Shyam and chased the fleeing young boy. 1/ Fatehabad or HC Satyabir number 424/DDR did that, the young boy managed to run away into the village as it

was a populated area, then Hon. S. Sub Inspector along with his companion Mulmajaan. After reaching the empty ground on Katakhedhi Road from Bhirdana, I asked the name and address of the boy who was captured, he told his name as Rajendra alias Aman son of Amrik Singh son of Uttam Singh resident of village Bhirdana, district Fatehabad. When Hon'ble Sub Inspector asked about the boy who escaped from the spot, Rajendra alias Aman told that the name of the boy who escaped from the spot is Sukhwinder Singh son of Jeet Singh resident of Katakhedhi Road, village Bhirdana. Then Hon'ble Sub Inspector checked the number of the motorcycle, it was written on the front and rear number plate of the motorcycle as HR 22U 9914 and the brand of the motorcycle was Royal Enfield Bullet 350, black in colour, which as per the informer, was with the person Rajendra alias Aman who was captured and his motorcycle number was same. On having information/suspicion of the presence of narcotic substance Heroin in HR 22U 9914, I issued a separate notice to the accused under section 50 of NDPS Act in writing that Messrs. Sub Inspector Prem Kumar No. 88/Fatehabad Haryana State Narcotics Control Bureau Unit Fatehabad I hereby inform you Rajendra alias Aman son of Amrik Singh son of Uttam Singh resident of village Bhirdana district Fatehabad that I have information/ suspicion of the presence of narcotic substance Heroin with you or in your motorcycle HR 22U 9914 brand Bulletba black in colour. On which it is very important to search your person or your motorcycle HR 22U 9914 brand Enfield Bullet 350 colour black, you have the legal right to get your person searched or your motorcycle searched on the spot in front of a Magistrate or a Gazetted Officer, or you can be taken along with your motorcycle and produced before them. Express your

wish Muslim Rajendra alias Aman read and understood the notice thoroughly and then Rajendra alias Aman and the witnesses signed the notice, then Rajendra alias Aman got his reply notice written that I Rajendra alias Aman son of Amrik Singh son of Uttam Singh resident of village Bhirdana district Fatehabad, you S/o Sub Inspector Prem Kumar No. 88/Fatehabad Haryana State Narcotics Control Bureau unit Fatehabad have read and understood the notice 50 NDPS Act. I want my personal search and my motorcycle brand HR 22U 9914 brand Enfield Bullet 350 black colour searched at the spot in front of a gazetted officer. Therefore, he should be called at the spot. Rajendra alias Aman and the witnesses signed the reply notice and then after action, I sent the notice or reply notice to my mobile no. 94163-05026 at 04.55 PM, contact Gazetted Officer Shri Somesh Vashisht Naib Tehsildar Bhattu Kalan on mobile no. 99923-35588 and inform about the situation on the spot. After getting the matter registered, I requested him to reach the spot, who told that I am coming to you on the spot for some official work, after waiting, Gazetted Officer Shri Somesh Vashisht, Naib Tehsildar Bhattu Kalan along with his personal staff arrived at the spot in a government vehicle HR-22 GV 1002 brand Bolero at 05.50 PM. The Chowkidar present at the spot, village Bhirdana, Vinod Kumar son of Amar Singh, resident of village Bhirdana, district Fatehabad, Mobile No. 90686-35812, was informed about the situation and action was taken. Then I informed the Gazetted Officer Shri Somesh Vashisht, Naib Tehsildar Bhattu Kalan, who arrived at the spot, and arrested the person Rajendra alias Aman son of Amrik Singh son of Uttam Singh, resident of village Bhirdana, district Fatehabad and his motorcycle HR 22U 9914 and presented the notice and reply notice in front of

him, who received the notice and Studied the reply notice and after giving full details to the arrested person Rajendra alias Aman, interrogated the arrested person and witnesses separately and inspected the motorcycle, then directed me to conduct personal search of the arrested person Rajendra alias Aman and his motorcycle HR 22U 9914 as per rules and to do videography or photography of the search or seizure. Then I informed EHC Radheshyam No. I gave my mobile phone brand Samsung touch screen to 789/Fatehabad and instructed him to do videography and photography of the search and seizure. As per the directions of the Gazetted Officer, I carried out the search of the said Rajendra alias Aman and his motorcycle HR 22U 9914 brand Royal Enfield Bullet 350 black colour as per rules. Heroin was recovered in a black colour waxy envelope from the right pocket of the black coloured lower worn by Rajendra alias Aman and a mobile phone was recovered from the front pocket of the checkered white coloured shirt worn by him. I weighed the seized heroin with the computer weighing scale kept in the kit and its total weight including the waxy envelope was 12.19 grams. Then I put the seized heroin along with the waxy envelope in a folded cloth and stamped it with my seal PK-3 and prepared the sample seal separately. Gazetted Officer Shri Somesh Vashisht Naib Tehsildar Bhattu Kalan got the all sealed Palanda Heroin along with sample seal stamped with seal SS -1/1. I took possession of the all sealed Palanda Heroin along with sample seal along with motorcycle HR 22U 9914 brand Royal Enfield Bullet 350 colour black, at Bajaria property through seizure memo and the recovered mobile phone was taken possession of by the police as deposit search by Bajaria Fard deposit search. On the property seizure memo and

Fard deposit search, the accused and the witness gave their statements. He signed and the gazetted officer Shri Somesh Vashisht, Naib Tehsildar Bhattu Kalan verified the search of Palanda Heroin with sample seal along with seizure memo and the FIR. I handed over the sample seal to ESI/ASI Sher Singh No. 1/ Fatehabad for use after the seal is put and the gazetted officer Shri Somesh Vashisht, Naib Tehsildar Bhattu Kalan kept the seal with himself after the seal is put and the videography or photography of the above search or seizure should be sent to EHC Radhey Shyam No. 789/Fatehabad dialed my mobile phone and returned it to me which is safe in my mobile phone. Accused Rajendra alias Aman told that Sukhwinder Singh son of Jeet Singh resident of Katakheri Road village Bhardana, Mobile No. 85299-13839 is with me who on seeing you ran away from the spot. I and Sukhwinder, both of us together bought the Heroin recovered from me from Sandeep alias CP son of Prem resident of Bhardana. Accused Rajendra alias Aman kept 12.19 grams of Heroin in his possession and the accused Sukhwinder Singh son of Jeet Singh resident of Katakheri Road village Bhardana and Sandeep alias CP son of Prem resident of Bhardana have committed the offence under Section 21(b)/29/61/85NDPS Act by being involved in drug smuggling, for which an article has been written and a case has been registered for filing the same. EHC Radhey Shyam No. It is being sent to the police station of No. 789/Fatehabad. Later, the case number registered should be informed. For further investigation of the case, another competent investigation officer should be sent to the spot. I, the accused along with the recovered goods, along with my fellow employees, and independent witness, am present at the spot. Today: - Bhardana to Katakheri Road, Wahd Rakba Village Bhardanas. Sd

Prem Singh ASI Sub Inspector Prem Kumar No. 88/Fatehabad Haryana State Narcotics Control Bureau Unit Fatehabad. Date. 07.12.2024 Time 07.10PM Mobile No. 94163-05026 Today, arrival at the police station, written complaint by EHC Radhey Shyam No. 789/Fatehabad, upon receipt of the case at the police station, the above mentioned case was registered. This was done and copies of FIR will be prepared on computer and sent to Bajriya Dak area magistrate and officers. Copy of the FIR along with original complaint is being sent to Arinda EHC for I/O at the spot and for further investigation of the case, SI was sent to the spot. SHO police station has been informed about the case.”

3. **Contention**

On behalf of the petitioner

Learned counsel for the petitioner contends that as per the prosecution story, the alleged contraband i.e. 12 grams and 19 milligrams of heroin was recovered from the co-accused Rajender @ Aman, on whose disclosure statement, the present petitioner has been nominated as an accused in the instant FIR. He further contends that co-accused Sukhwinder Singh has already been granted interim relief by this Court vide order dated 18.12.2024. It has been contended on behalf of the petitioner that nothing is to be recovered from the present petitioner, therefore, his custodial interrogation is not required at this stage.

Notice of motion.

On behalf of the State

Mr. B.S. Virk, Sr. DAG, Haryana accepts notice on behalf of the respondent-State and opposes the grant of anticipatory bail to the petitioner

on the ground that in the disclosure statement of co-accused Rajender @ Aman, it has been categorically mentioned that the recovered contraband i.e. 12 grams and 19 milligrams of heroin was purchased from the present petitioner.

4. **Analysis**

Be that as it may, considering the fact that the petitioner was nominated as an accused only on the basis of disclosure statement of co-accused Rajender @ Aman; co-accused namely Sukhwinder Singh has already been granted the interim relief by this Court vide order dated 18.12.2024, as has been averred by learned counsel for the petitioner; nothing has been recovered from the present petitioner as whatever recovery was effected was from other co-accused person namely Rajender @ Aman. In addition, the custodial interrogation of the petitioner is not required at this stage as nothing is to be recovered from him. Also considering that there are no prior antecedents of the petitioner meaning thereby he is not a habitual offender. The State also could not demonstrate any other piece of evidence to connect the petitioner with the offence in this FIR except the bald statement of co-accused Rajender @ Aman which do not have any evidentiary value being hit by Sections 26 and 27 of the Indian Evidence Act.

The Hon'ble Supreme Court framed the following question to be answered in *Tofan Singh vs State of Tami Nadu 202 ; SCC Online SC 882:-*

(I) Whether an officer " empowered under Section 42 of the NDPS Act" and or " The officer empowered under Section 53 of the NDPS Act" are " Police Officers" and therefore statements recorded by such officers would be hit by section 25 of the Evidence Act; and

(II) What is the Extent, nature, purpose and scope of the power conferred under section 67 of the NDPS Act available to and exercisable by an officer under section 42 thereof, and whether power under Section 67 is a power to record confession capable of being used as substantive evidence to convict and accused?"

The same was answered in Para 155 of the judgment as ;

155. We answer the reference by stating :

(I) That the officers who are invested with powers under section 53 of the NDPS Act are " Police Officers" within the meaning of Section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of Section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act.

(II) That a statement recorded under Section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act.

5. **Decision**

In the light of above, the petitioner is directed to be released on anticipatory bail subject to his joining investigation with the Investigating Officer concerned within a period of one week from today, on furnishing of personal/surety bonds to his satisfaction. The petitioner shall also abide by the terms and conditions as envisaged under Section 482(2) of BNSS, 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 petitioner does not comply with the aforesaid direction of joining the investigation within a period of one week, the order passed by this Court today shall automatically stands cancelled.

In the aforesaid terms, the present petition stands allowed.

08.01.2025

Poonam Negi

**(SANDEEP MOUDGIL)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No