

CRM-10268-2020 in/and CRM-M-3533-2020

SONIA VS. STATE OF PUNJAB

Present : Mr. Rishav Jain, Advocate
for the applicant-petitioner.

Mr. H. S. Grewal, Addl. A.G., Punjab and
Mr. Gaurav Garg Dhuriwala, Sr. DAG, Punjab.

CRM-10268-2020

Prayer in the main petition is for grant of regular bail to the applicant-petitioner in FIR No. 59 dated 10.07.2019, registered under Sections 22/61/85 of the NDPS Act at Police Station Sadar Rajpura, District Patiala.

The applicant-petitioner has moved present application for grant of interim bail on the ground that she has given birth to a male child on 02.04.2020 while in custody.

On 09.04.2020, while issuing notice of the application, this Court had directed Superintendent, Central Jail, Patiala to apprise the Court, after taking advice and opinion from the Civil Surgeon/SMO/Jail Doctor, concerned as to which of the two places i.e. the hospital, where the applicant-petitioner and her new born child are currently admitted or the prison, where the applicant-petitioner is confined, would be more suitable and safe for both of them in view of the prevailing circumstances regarding outbreak of COVID-19.

Brief facts of the case are that on 10.07.2019, the applicant-petitioner, who is a young lady, was apprehended by ASI Swaran Singh along with his co-police officials, with the allegations that while they were on patrol duty at about 08.00 AM, they noticed that applicant-petitioner,

carrying a black coloured poethylene bag, was coming towards the railway station and on seeing the policy party, she threw the said bag. On suspicion, ASI Swaran Singh along with Lady Constable Meenakshi and other police officials apprehended the applicant-petitioner at about 08.00 AM. She was inquired about her name and address and thereafter, ASI/Investigating Officer picked up the said black coloured poethylene bag and searched the same and found that it was containing 80 injections mark *Buprenorphine* and 80 injections of *Avil Phineramine Maleate*. Thereafter, the Investigating Officer tried to join an independent witness but nobody was ready to. The Investigating Officer, thereafter, took out the injections from the said bag and kept in a plastic box and sealed the same by his seal 'SS' and by making a separate pack of sample, handed over the same to co-official Constable Didar Singh. A recovery memo was prepared and finding that the applicant-petitioner has committed an offence punishable under the NDPS Act, an information was sent to the police station through PHG Surinder Kumar for registration of the case at 09.30 AM.

Learned counsel for the applicant-petitioner has argued that applicant-petitioner is having no previous history of involvement in any drug related case/criminal case and as per FSL report, one parcel was containing *Buprenorphine HCL*, whereas the other parcel was containing Avil, which is not covered under the NDPS Act.

Learned counsel has further argued that even though it was a case of chance recovery, still the Investigating Officer has not followed the provisions of Section 50 of the NDPS Act as a bare perusal of the FIR itself shows that from the time the applicant-petitioner was apprehended by the police party till completion of the investigation, which includes

recovery of injections, preparation of sample parcels and bulk parcels, preparation of recovery memos and other memos, no information was sent to the police station to call a second investigating officer.

Learned counsel has relied upon the judgment rendered by Hon'ble Supreme Court in *Mohan Lal vs. State of Punjab, (2018) 17 SCC 627*, wherein it has been held that where the complainant and the Investigating Officer are the same person, it does not amount to a fair investigation. It is further held that justice must not only be done but it must appear to be done also and any possibility of bias or a pre-determined conclusion has to be excluded.

The aforesaid judgment has further been interpreted by Hon'ble Supreme Court in *Varinder Kumar vs. State of Himachal Pradesh, 2019 SCC Online 170*, wherein it has been held that the judgment rendered in *Mohan Lal's case (supra)* has a prospective application keeping in view the facts of individual case.

The instant FIR has been registered on 10.07.2019, i.e. much after the pronouncement of judgment by Hon'ble Supreme Court in *Mohan Lal's case (supra)* and, thus, it is submitted that the complainant and the Investigating Officer are the same person in the present case.

It is further argued by learned counsel that even otherwise, no information was sent to the police station immediately after having suspicion that the plastic bag might be containing some narcotic substance.

Learned counsel further submitted that in ordinary course, on receiving a secret information, the same is reduced in writing and a message is sent to the police station for registration of the FIR, whereas in the present case, instead of sending an information, prior to conducting the

investigation, the complainant/IO has himself conducted the entire investigation and only thereafter, after a period of 1 ½ hours, he sent the information to the police station for sending a second investigating officer, whose role was limited as the major investigation was already conducted.

It is further submitted that after the second investigating officer SI Nirvair Singh reached at the spot, after the registration of the FIR, the personal search of the applicant-petitioner was conducted in which nothing was found.

In reply, learned State counsel has submitted that the recovery effected from the applicant-petitioner would fall in the category of commercial quantity, however, on the basis of the custody certificate dated 09.04.2020, submitted by Baljeet Singh, PPS, DSP, Central Prison, Patiala, the applicant-petitioner is in judicial custody since 10.07.2019. In a separate affidavit, filed by Superintendent, Central Jail, Patiala, it is stated that applicant-petitioner has given birth to a male child on 01.04.2020 in Rajindra Hospital, Patiala and she was readmitted in jail on 03.04.2020. This affidavit is also supported by a communication of Civil Surgeon, Patiala, dated 11.04.2020, wherein it is stated that applicant-petitioner along her infant child be kept in creche area with two other inmates who can take care of the mother and newly born child.

Learned State counsel has further submitted that challan has already been presented on 15.12.2019 and charges have also been framed on 20.12.2019 and there are total 11 prosecution witness, however, none has been examined till date.

After hearing learned counsel for the parties, I find merit in the present application for the following reasons:

(a) The applicant-petitioner is a young lady who has no previous history of involvement in any such case.

(b) She has given birth to a child on 01.04.2020 and as per report of the Civil Surgeon, Patiala, she can be kept in a Creche along with two other inmates who can help her. A perusal of this letter/report would show that no inmate is a medical expert to take care of the mother and child.

(c) The applicant-petitioner is in judicial custody for the last more than eight months and the investigation is complete and her custodial investigation is no more required. Even the charges stand framed on 20.12.2019 and till date, no prosecution witness has been examined, which shows that in the present prevailing condition in the country, the prosecution witnesses may not be examined for another couple of months or so.

(d) A perusal of the FIR would show that complainant/ASI Swaran Singh has himself conducted the entire investigation. The applicant-petitioner was apprehended at about 8.00 AM and after completing the entire investigation, which includes preparation of sample parcels and other documents and memos, an information in writing was sent to the police station at 9.30 AM i.e. after 1 ½ hours and no efforts were made to join a second investigating officer. Even as per the prosecution version, when the second investigating officer SI Nirvair Singh came and conducted the personal search of the applicant-petitioner through Lady Constable Meenakshi, nothing was recovered.

Therefore, this Court finds sufficient reasons to believe that applicant-petitioner is entitled to get the concession of interim bail.

Accordingly, the present application is allowed and the

applicant-petitioner is granted interim bail for a period of three months commencing from today itself.

Considering the prevailing situation and the restricted working of the Judicial Officers/Additional Sessions Judges in the Districts on account of outbreak of COVID-19, the Superintendent, Central Jail, Patiala is directed to release the applicant-petitioner forthwith today itself after obtaining an undertaking from one of her blood relations i.e. parents/her brother or her husband, attested by her lawyer that she will appear before the trial Court within a period of 14 days from today to furnish bail/surety bonds to the satisfaction of the trial Court. On receiving such undertaking, the Superintendent, Central Jail, Patiala shall release the applicant-petitioner forthwith.

Main case

List on 07.07.2020.

April 15, 2020
Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

सत्यमेव जयते

