

**Amarpal Singh and Others Vs. Narcotics Control Bureau**

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**Court :** Delhi

**Decided On :** Aug-13-1998

**Reported in :** 1998(46)DRJ676

**Judge :** J.B. Goel, J.

**Acts :** Narcotic Drugs & Psychotropic Substance Act, 1985 - Sections 21, 29 and 37

**Appeal No. :** Crl.M.(M) No. 1815/98 and 946/98

**Appellant :** Amarpal Singh and Others

**Respondent :** Narcotics Control Bureau

**Advocate for Def. :** Ms. Puneet Arora, Adv.

**Advocate for Pet/Ap. :** Mr. R.D. Mehra and; Mr. Sanjeev Kumar, Advs

**Judgement :**

ORDER

**J.B. Goel, J.**

1. By this order the aforesaid two bail applications, one by Amarpal Singh and the other by Ved Prakash Manchanda who are being prosecuted for offence under Sections 21 read with Section 29 of the Narcotic Drugs & Psychotropic

Substances Act, 1985 (for short the Act) are being disposed of.

2. Briefly, the facts are that the Narcotic Control Bureau (for short NCB) on 25.3.1997 had received a secret information at about 12.45 p.m. that one Ved (a bad character) will deliver a consignment of heroin to one sardar in Mianwali Nagar who will reach there in Car No. DL-8C-0657 and then the Sardar will Pass from Pira Garhi Chowk at New Rohtak Road with that consignment. Address of said Ved Prakash was ascertained. One team of NCB was deputed near his house No. B-7/1 Mianwali Nagar and another team was deputed at Pira Garhi chowk.

3. At 1.55 p.m. Maruti car No. DL-8C-0657 came and stopped near the said house with two sikh persons: it was driven by a sardar (later identified as Tarvinder Pal Singh) and the other sardar (later identified as Amar Pal Singh) came out of the car, went inside that house, and after about 10 minutes came out Along with a person (identified as Ved Parkash) and the latter handed over a polythene packet to Amar Pal Singh near the car.

4. The said two sardars left that place in that car: the car was intercepted near Pira Garhi Chowk at about 2.30 p.m. by the other team waiting there. They showed the search authorisation, gave a notice and carried the search and a polythene packet was recovered from Amar Pal Singh and on search it was found to contain 940 gms. of Heroin. Two samples of 5 gms. each were taken and the contraband and the two samples were seized in duly sealed separate parcels, against a seizure memo panchnama which was signed by Amar Pal Singh and attested by panch witnesses. A Panchnama was also drawn.

5. A notice under Section 67 of the Act was served on both Amar Pal Singh and Tarvinder Pal Singh and they were taken to NCB office. There both Amar Pal Singh and Tarvinder Pal Singh made disclosure statements. Amar Pal Singh in his disclosure statement made voluntarily disclosed about his source of acquiring 940 gms. of heroin being from Ved Parkash Manchanda for which he was to get commission. In the meantime, another team of NCB went to house No. B-7/1. Mianwali Nagar and that house was searched in the presence of Ved Parkash Manchanda during 4.00 P.M. to 7.00 P.M. on the same day (25.3.1997) and some documents were seized after preparing a panchnama duly signed by Mr.

Manchanda and panch witnesses. A notice under Section 67 of the Act was served on him also. He was also taken to NCB office. On interrogation he made a voluntary statement about the source of his acquiring heroin from one Kamal Maku which was to be given by him to Amar Pal Singh against payment of Rs. 1,00,000/- for which he was to get commission.

6. Another team of NCB had visited the house of Amar Pal Singh at C-89, Fateh Nagar, New Delhi. Smt. Narender Kaur, w/o Amar Pal Singh was present there. A notice under Section 50 was served on her and the house was searched in her presence and on search some white powder in a small poly- thene packet, one vacuum sealer, a small diary, a small weighing scale, some documents, Rs.2,44,900/- in cash and US\$ 50 and some other articles were recovered and seized after drawing panchnama signed by Smt. Narender Kaur and attested by panch witnesses. Packet containing heroin was separately sealed. At 9.45 P.M. on the same day (25.3.1997) premises of Kohli Travels Services at WZ-33-A, Shop No.10, Virender Nagar, Janakpuri Road were searched but nothing incriminating was found from there. A report was drawn about these recoveries and both Amar Pal Singh and Ved Parkash Man- chanda were arrested in the early hour of 26.3.1997. However, Tarvinder Pal Singh was released. On tests made at Central Revenue Control Laboratory, the seized contraband was found to be heroin. Both these accused are being prosecuted before the Designated Court at New Delhi. Bail application of the accused Amar Pal Singh was rejected by the trial court on 20.5.1998 while interim bail application of Ved Prakash was dismissed by the trial court and by this court.

7. Both have now approached this court for bail. Accused Amar Pal Singh was granted ex parte interim bail on 29.6.1998 which is being continued. While the other accused is in custody.

8. Shri R.D. Mehra, learned counsel for the accused, Amar Pal Singh has contended that his client is also known as Sant Singh @ P.P. Singh and he was prosecuted with this name earlier. He was also being prosecuted in another case in the court of Shri Pradeep Chadha, MM in FIR No.8/96 under Delhi Gambling Act; and had appeared Along with other coaccused in that case on 26.3.1997

(there are 13 accused in that case). He was arrested by NCB on 26.3.1997 when after attending that court he was going in his car and has been falsely implicated in this case. The proceeding and the recoveries are bogus, fake and fabricated. He was not arrested on 25.3.1997 otherwise he could not have attended the court hearing on 26.3.1997. He has also pointed out that name of H.C. Sharma has been introduced in the relevant papers by scoring the name of Hassan which also shows that documents have been fabricated and the documents relied upon by the NCB are not diarised and were fabricated later on. Notices u/s 50 and 67 are also manipulated and fabricated; witnesses introduced are neither independent nor reliable. He further contends that had he been arrested on 25.3.1997 he would have been produced before a magistrate within 24 hours whereas he was produced before a Magistrate for remand late in the night on 26.3.1997. He contends that the case is false and in any case not free from suspicion and in the circumstances the bar u/s 37 of the Act is not available and the petitioner is entitled to bail.

9. On the same lines are the arguments addressed by the learned counsel for the other petitioner Ved Prakash Manchanda. He has contended that in the circumstances when the case made out against Amar Pal Singh is false, it is false and fabricated against his client as well.

10. Learned counsel for the NCB has refuted these contentions as misconceived, baseless and unjustified: the very fact that the plea has been taken belatedly after 14 months itself shows its falsehood and lacking in bona fides: he has contended that the arrest of the two accused, their seizure memos and search panchnamas and notices were drawn on 25.3.97 which are signed by the accused with date put under their signatures in their own handwriting on 25.3.97. The FIR itself was recorded at 1.10 a.m. on 26.3.1997 and it is absurd to say that these are fabricated documents: accused Amar Pal Singh was apprehended on 25.3.1997 at about 2.30 p.m.: and the other coaccused was also apprehended on the same day at about 4.00 p.m.: both remained with the NCB teams, interrogated; notices under Sections 50 and 67 were issued and their statements were recorded on 25.3.1997. They were arrested in the early hours of 26.3.1997. On incriminating material being recovered they would not have been allowed to be let off. The accused

Amarpal Singh could not have attended the Court of the Magistrate on 26.3.1997 when he was in their custody, he was either impersonated by some one else or his absence was not noticed by the Magistrate, he was one of 13 accused persons involved in that case and it is not the practice in the courts to take roll call of accused nor while recording their presence the courts ensure their identity when the number of accused persons is large. In any case, he contends that the arguments have been addressed as if it is after trial: at this stage the material is not to be put to minute scrutiny and at this stage there is no reason to doubt the correctness of the documents and other material relied by the prosecution. The petitioners thus are not entitled to be released on bail.

11. I have considered the contentions and also considered the material relied by the parties and the circumstances of the case. The main plank of arguments of the learned counsel for the accused Amarpal Singh is that he had appeared in the court of Shri Pradeep Chadha. MM on 26.3.1997 where he was being prosecuted under Gambling Act in FIR No. 8/96. It is not disputed that this accused (assuming he is also known as Sant Singh) was one amongst 13 accused. The courts normally do not take roll call of the accused individually when the number of accused is large and the courts also do not verify the identity of the accused persons and in such cases sometimes absence of one or two accused persons may remain unnoticed noticed or if he is impersonated. This ground appears to have been taken belated for the first time when the bail application was filed on 20.5.98. He is in custody since 25.3.1997 and is being prosecuted from June 1997. Learned trial court has obviously taken into consideration this plea while rejecting his bail application on 20.5.1998. It is not disputed that various documents and memos relied by the prosecution are signed by the accused persons with date put under their signatures. This fact cannot be ignored at this stage.

12. As regards allegations of name of H.C. Sharma having been written in place of Hassan by NCB this fact and its effect, if any, cannot be determined in these proceedings. This is a matter to be gone into by the trial court at appropriate time.

13. The two accused have been charged for offence under Sections 21 readwith Section 29 of the Act. Section 37 of that Act mandates that a person accused of such an offence is not entitled to bail unless 'the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail'. In view of the facts and the circumstances and the material on record it is not possible to come to such conclusion at this stage.

14. I thus do not find any merit in these petitions and both the petitions are accordingly dismissed.

15. Accused Amarpal Singh is on interim bail. His interim bail and bail bonds are hereby cancelled. He shall surrender forthwith. Compliance report about his surrender shall be made by the trial court to this Court for 31.8.1998.

16. The trial court record be returned forthwith.

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