

**IN THE COURT OF SUMIT GHAI,
JUDGE SPECIAL COURT, RUPNAGAR (UID NO.PB-0173).**

BA Registration No.BA/174/2022
CNR No.PBRO01-000862-2022
Decided on 04.03.2022

State of Punjab Vs. Ashiv @ Asive

F.I.R. No.6 dated 29.01.2022
Under Sections: 22-61-85 of NDPS Act
Police Station: Singh Bhagwantpur

First Regular Bail application under Section 439 Cr.P.C.

Present: Shri Sanjeev Verma, Adv. Counsel for the applicant (through VC)
Shri Gurpreet Singh APP for the State.

ORDER:

Vide this order, I shall dispose of first regular bail application under Section 439 Cr.PC filed by applicant Ashiv @ Asive **along with prayer for interim bail, a separate application for interim bail has also been filed by his counsel.**

2. Notice of the application was given to the State and Addl. PP appeared for the State and has contested the bail application, record has been produced by SI Subhash Chander. His separate statement has also been recorded.

3. The learned counsel for the applicant has submitted that the

applicant/accused is innocent and has committed no offence. That a false and fabricated case has been planted upon the applicant/accused. That nothing has been recovered from the applicant/accused by the police and a false recovery has been planted upon him. That the co-accused namely Surmukh Singh @ Shami has already been granted interim bail by this Court vide order dated 02.03.2022. That the applicant/accused is in custody since 29.01.2022. That the applicant/accused will not tamper with the prosecution evidence and will not jump over the bail or abscond, if he is released on bail. With these submissions, the learned counsel for the applicant has prayed that the present bail application may be allowed.

4. It has been submitted by the ld. APP that from the possession of applicant, huge quantity of narcotic substance has been recovered so the allegations against him are serious as such he does not deserve the concession of regular/interim bail. Though, learned APP has conceded that the result of FSL is yet to be received. Accordingly, learned APP has prayed that the bail application may be dismissed.

5. I have heard the rival submissions of both the sides and have carefully perused the record with their able assistance.

6. Heard. Briefly as per the allegations of prosecution on 29.01.2022 ASI Pardeep Kumar alongwith police party was present at T-point Village Behrampur, Ropar-Kurali Road and in the meantime at about 1:00 PM he received a secret information that co-accused Surmukh Singh @ Shami alongwith **applicant/accused Ahsiv** who was habitual

trafficker of drugs Heroine were looking for the customers near Canal Bridge at Village Pathreri Jattan and if raid is conducted co-accused Surmukh Singh along with **applicant/accused Ashiv** can be apprehended red handed. Thereafter, SI Dilbag Singh joined the police party at T-point Village Behrampur. Thereafter, police party went to the disclosed place and the co-accused Surmukh Singh along with **applicant/accused Ashiv** threw the two polythenes pouches. The pouch which was thrown by **accused/applicant Ashiv was found containing HEROINE weighing 6 gms**. Whereas, from the other pouch which was thrown by co-accused Surmukh Singh police recovery 9 gms of HEROINE.

It is submitted by the learned APP for the State, on the instructions of the IO, that FSL report is still awaited to confirm the presence of Narcotics substance in the alleged contraband recovered in this case. That the recovery has already been effected. The accused has been in custody since 29.01.2022 as stated by the Id. APP.

7. Relying upon the law laid down by the Hon'ble High Court in **CRM No.M-13140 of 2012 Inderjit Singh @ Laddi Versus State of Punjab**, the learned counsel has also submitted that the prayer for interim bail may be considered along with the present the regular bail application and that till the confirmation of the alleged Narcotic substance as per the Chemical/Forensic examination the applicants may be granted interim bail.

8. It is relevant to observe here that The Hon'ble Division Bench of Hon'ble High Court **in CRM No.M-13140 of 2012 Inderjit**

Singh @ Laddi Versus State of Punjab has held that *Indeed the delay in testing the sample does result in prejudice to an alleged offender as till the results are available there can be no definite certainty with regard to the contraband in respect of which there has been a contravention or that has been recovered. In such cases to await the outcome of the final FSL report there is likely to be delayed, the accused may be released on interim bail.*

9. In view of the contentions raised by the learned counsel for the applicant and in view of the parameters laid down by the division bench of Hon'ble Punjab and Haryana in the judgment rendered in **Inderjit Singh @ Laddi Versus State of Punjab (supra)**, accused/applicant is ordered to be released on interim bail till the receipt of the report of FSL and without prejudice to the result of this report, on his furnishing bail bonds in the sum of Rs.1,00,000/- subject to the satisfaction of Illaqa/Duty Magistrate on the following conditions:-

1. That the applicant/accused shall appear in the Court on each and every date of hearing.
2. That the applicant/accused shall not leave the country without prior permission of the Court.
3. That the applicant/accused shall not threaten or induce any witness to dissuade him from disclosing the true facts,
4. That the applicant/accused will surrender before this Court within one week when the FSL report is received and seek regular bail afresh.
5. That the applicant/accused shall not indulge in the case of similar nature.

However, none of the observations made herein before shall have any bearing on the merits of the case. The present bail application stands disposed of accordingly.

Police record be returned. Bail file be tagged with the remand papers.

Pronounced in open court on 04.03.2022

Deepak Kumar, Stenographer-II

Sumit Ghai,
Judge Special Court,
Rupnagar.
(UID No.PB-0173)

Sumit Ghai,
JSC, Rupnagar. 04.03.2022

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Present: Shri Sanjeev Verma, Adv. Counsel for the applicant (through VC)
Shri Gurpreet Singh APP for the State.

Record produced. Statement of SI Subhash Chander recorded.

Arguments heard. Vide separate detailed order of today, bail application stands disposed of as detailed therein. Police record be returned. Bail file be tagged with the remand papers.

Pronounced in open court on 04.03.2022

Deepak Kumar, Stenographer-II.

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Judge Special Court,
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