

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-10975-2015

Date of decision: 29.05.2015

Saabi

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE R.P. NAGRATH

1. *Whether Reporters of the local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

PRESENT: Mr. DS Pheruman, Advocate for the petitioner.

Mr. Gazi Mohd., DAG, Punjab.

R.P. NAGRATH, J.

Prayer in the instant petition filed under Section 439 Cr.P.C. is for grant of regular bail to the petitioner in FIR No. 142 dated 26.04.2013 under Section 21/22/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act') at Police Station Civil Lines, Police District Batala, District Gurdaspur.

2. On 26.04.2013 at about 2.30 p.m., the police party stopped Ford Endeavour Vehicle No. PB-08-BB-0071 and apprehended the petitioner and his co-accused, namely; Bunti as they tried to run away from the spot in different directions. The police party suspected the accused persons to be in possession of contraband article. The accused

persons were apprised of their right of getting their personal search as well as that of vehicle from a Gazetted Officer or a Magistrate. They opted to be searched before a Gazetted Officer. The Deputy Superintendent of Police, Sub Division City, Batala was called at the spot.

3. From the personal search of Bunti 50 injections without label each containing 2 ml. quantity of the commodity and 45 such injections wrapped in a polythene bag without label were recovered from the search of the petitioner. Thereafter, search of the vehicle was conducted and it contained 2 kgs. of intoxicant power in a polythene bag and from other cardboard box 20 intoxicant capsules lying there were recovered. From another cardboard box 50 vials of 10 ml. each without label were recovered and from another cardboard box 1000 intoxicant capsules were recovered.

4. I have heard learned counsel for the petitioner, learned State counsel and perused the paper-book.

5. Learned counsel for the petitioner vehemently contended that the vehicle is in the ownership of co-accused-Bunti and the petitioner can be said to be in conscious possession of 45 injections which were found to be containing Pheniramine Maleate but cannot be fastened with the liability with regard to the other recovery made from the vehicle on the premise that petitioner cannot be said to be in conscious possession of the contraband found in the vehicle.

6. Annexure P-2 is the report of Chemcial Examiner, Government of Punjab, for determining the salt in the samples out of the

injections recovered from the petitioner. The salt Pheniramine Maleate was found positive. However, report of the Chemical Examiner, in respect of rest of the commodities has not been placed on record otherwise it was not a disputed proposition that the recovery made from the possession of petitioner and that from the co-accused and the vehicle would be much more than the commercial quantity. If the contraband has been recovered from the personal search of co-accused and more contraband has been recovered from the vehicle in which the petitioner was travelling, the question that petitioner cannot be said to be in conscious possession of those articles is a matter of trial for which the benefit at the stage of hearing on the bail application cannot be given. The recovery of the contraband was made on personal search of the accused persons and further from the vehicle in which the petitioner was travelling would be a very very important link to fix the liability upon the petitioner *prima facie* though that matter is to be ultimately discussed during the course of trial.

7. In **Gian Chand and others Vs. State of Haryana, 2013 (14) SCC 420**, the police party saw a jeep coming at a high speed from opposite direction and asked the said Jeep to stop. However, instead of stopping, the driver accelerated the speed of the jeep. This created suspicion in the minds of the police officials and thus they chased the jeep. The occupants of the jeep took a U-turn and in that process the jeep struck the wall of a house in the village. The three occupants of the jeep tried to run away but they were caught by the police. The Hon'ble Supreme Court dismissed the appeal by holding that possession of all the

occupants of the Jeep was proved under the circumstances.

8. From the above discussion, I would find that there is no circumstance from which a satisfaction can be recorded that there are no reasonable grounds for believing that the petitioner is guilty of the offence, at this stage.

9. In view of the clear bar to the prayer for bail created by Section 37 of the Act, I would find no merit in the instant petition and the same is dismissed.

May 29, 2015

rishu

**(R.P. NAGRATH)
JUDGE**