

Sr. No. 212

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM No. M-19476 of 2015
Date of Decision: 01.09.2015

Sandeep Kumar

--Petitioner

Vs

State of Punjab

--Respondent

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. B.S.Makar, Advocate,
for the petitioner.

Mr.K.D.Sachdeva, Addl. A.G.Punjab.

RAMESHWAR SINGH MALIK J. (ORAL)

Petitioner seeks bail pending trial in FIR No. 66 dated 30.07.2014 under Sections 18/29/61/85 of Narcotic Drugs and Psychotropic Substances, Act (for short 'NDPS Act') registered at Police Station Tapa.

Learned counsel for the petitioner submits that the case of the petitioner is squarely covered by the order dated 11.03.2015 passed by this Court in CRM No. M-44160 of 2014 (Gurjit Singh @Bunty Vs. State of Punjab). He further submits that once an indefeasible right under Section 167(2) Cr.P.C. has accrued in favour of the petitioner, the same cannot be taken away even by presentation of challan. He prays for allowing the present petition.

On the other hand, learned State counsel submits that in the present case although without the Chemical Examiner's Report,

yet police report under Section 173 Cr.P.C had been presented before the learned Court of competent jurisdiction well within the extended period. He further submits that even the FSL report has been received and thereafter charges have been framed. Part of prosecution evidence has already been produced and all the remaining PWs have been summoned for the very next date of hearing i.e. 08.09.2015. He would next contend that since the recovery of commercial quantity was effected from the petitioner and trial is about to conclude, he is not entitled for the concession of bail at this stage. He prays for dismissal of the present petition.

Having heard the learned counsel for the parties, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that keeping in view the totality of the facts and circumstances of the present case, noticed here-in-above, petitioner has not been found entitled for bail pending trial.

It is a matter of record that the commercial quantity of contra-band has been recovered from the vehicle i.e. Tata Safari owned by the petitioner. It is also not in dispute that police report under Section 173 Cr.P.C. had been presented well within the time. However, initially, the police report was without the Chemical Examiner's Report. Later on, the FSL report has also been received and thereafter charges have been framed. Prosecution evidence has been produced in part and all the remaining PWs have been summoned for the next date of hearing i.e. 08.09.2015, which shows that trial is about to conclude.

So far as the order dated 11.03.2015 passed by this Court in CRM No. M-44160 of 2014 (supra) and indefeasible right of the petitioner is concerned, there is no dispute about the observations made therein. However, on close perusal of the cited order, the same has not been found of any help to the petitioner being distinguishable on facts.

It is settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of even one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in ***Padmausundra Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533.***

Further, a close perusal of the order dated 11.03.2015 passed by this Court in Gurjit Singh's case (supra) would show that the judgments of the Hon'ble Supreme Court in ***Narender Kumar Amin Vs. CBI and others 2015(1) RCR (Crl.) 566 as well as Abdul Azeez P.U. and others Vs. National Investigation Agency 2015(1) RCR (Crl.)239 and also the full bench judgment of this Court in State of Haryana Vs. Mehal Singh and others 1978 PLR 480*** have not been referred. In this view of the matter, the order passed by this Court in Gurjit Singh's case (supra) has been found to be rendered in a different fact situation.

In view of the above and without commenting anything further on the merits of the case, at this stage, lest it should prejudice the rights of either of the parties, no case for bail pending trial has

been made out.

Dismissed.

(RAMESHWAR SINGH MALIK)
JUDGE

01.09.2015
vandana