

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Misc. No. M-31260 of 2015
Date of decision: 03.12.2015

Kulwant Singh @ Happy

..Petitioner

Versus

State of Punjab

..Respondent

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see judgment? Yes/No**
- 2. To be referred to reporters or not? Yes/No**
- 3. Whether the judgment should be reported in the Digest? Yes/No**

Present: Mr. Jitender Pal Singh, Advocate
for the petitioner.

Ms. Ritu Punj, Addl. AG, Punjab
for the respondent – State.

Daya Chaudhary, J. (Oral)

This petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case FIR No.4 dated 08.01.2015 registered under Sections 22/61/85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Cantt. Ferozepur, District Ferozepur.

Learned counsel for the petitioner submits that the petitioner has falsely been implicated in the case. Not only the violation of Section 50 of NDPS Act is there but even no offer of being searched before the Gazetted Officer or the Magistrate was given at the time of recovery. Even no public witness was joined. Learned counsel further submits that the alleged recovery is of 1100 tablets of intoxicating tablets and only one strip was sent for chemical

examination. The petitioner was arrested on 08.01.2015 and no other case under NDPS Act is pending against him. Learned counsel also submits that same controversy was in case titled as **Des Raj vs. State of Punjab, Criminal Misc. No.23142 of 2015 in Criminal Appeal No. S-1165-SB of 2014** wherein it was held that unless the total contraband is sent for chemical examination, it cannot be considered that in the other packets, same substance is there. In that case also, only one strip of 10 tablets and one sample of Rexcof was sent for chemical examination. By giving benefit of said procedure, sentence of the accused-applicant was suspended during pendency of the appeal.

Learned State counsel submits that in case, the petitioner was not satisfied with the sample being sent, he could have made a request to the Court for sending another sample at the time of preparation of inventory but no such request was made by him.

Heard arguments of learned counsel for the petitioner as well as learned State counsel and have also perused the allegations levelled in the FIR and other documents available on the file.

As per arguments raised by learned counsel for the petitioner, neither any independent witness was joined from the public at the time of recovery nor any efforts were made regarding the same. The Investigating Officer did not give any option to the petitioner to be searched before the Gazetted Officer or Magistrate. It is also the argument of learned counsel for the petitioner that there were 11

packets each containing 100 tablets, which comes to total 1100 tablets out of which, only two packets were separated and sent to CFSL. Sample was not taken from each packet and it cannot be said that the contents of other remaining 9 packets were similar to the contents of the 2 packets, which were sent for chemical analysis.

Unless the total contraband is sent for chemical examination, it cannot be considered to be the same, on the basis of the samples sent for chemical examination. The petitioner was arrested on 08.01.2015 and thereafter, he was granted interim bail by the lower Court vide order dated 05.05.2015. Subsequently, on receipt of Chemical Examiner's report, the petitioner was taken into custody and his interim bail was cancelled. The challan has already been presented and charges have also been framed. The petitioner is not required for investigation anymore. It has been brought to the notice of the Court by learned State counsel that the petitioner neither misused the concession of interim bail nor any efforts were made by him to influence the prosecution witnesses.

Under similar circumstances, this Court has granted concession of regular bail to accused in **Criminal Misc. No. M-17023 of 2015** titled as **Ranjit Singh vs. State of Punjab** vide order dated **27.05.2015** and suspended the sentence of accused Des Raj in **Criminal Misc. No.23142 of 2015** in **Criminal Appeal No. S-1165-SB of 2014** on **10.08.2015** by holding that unless the total contraband is sent for chemical examination, it cannot be considered to be the

same on the basis of one sample.

Moreover, the petitioner is not involved in any other case of NDPS and he is not having any criminal background. It cannot be presumed that the contents of the remaining tablets, which were not sent for examination were also the same.

In view of the facts as mentioned above and keeping in view the submissions made by learned counsel for the petitioner; the fact that challan has been presented; charges have been framed; the petitioner is in custody for the last more than 4 months; all the witnesses are official and there is no possibility that the petitioner may influence them and no other case is pending against the petitioner, the present petition is allowed and the petitioner (Kulwant Singh @ Happy) is directed to be released on regular bail subject to furnishing bail/surety bonds to the satisfaction of the trial Court.

03.12.2015
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(DAYA CHAUDHARY)
JUDGE