

In the High Court of Punjab and Haryana at Chandigarh

CRM No. M-40703 of 2014
Date of decision: 12.01.2015

Karu Lal and another

.....Petitioners

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr.Vipul Jindal,Advocate
for the petitioners.
Mr.V.P.S.Sidhu,Assistant
Advocate General,Punjab

SABINA, J.

This petition has been filed by the petitioner under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail in case FIR No. 14 dated 11.11.2013, under Sections 420, 467, 468, 471, 218, 201, 120-B of the Indian Penal Code, 1860 and Section 7, 13(1)(d) read with Section 13(2) and Sections 8, 12 of the Prevention of Corruption Act, 1988 registered at Police Station Vigilance Bureau, Flying Squad-1,Punjab at Sahibzada Ajit Singh Nagar (Mohali).

Heard.

FIR No. 100 dated 11.7.2012 was registered against the petitioners under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Shambu,Patiala. Petitioner

No.1 filed Crl.Misc.M-18861 of 2013 wherein the following order was passed on 27.8.2013 (Annexure P5):-

“As is evident from the record that, in the wake of recovery of commercial quantity of 10 kgs. opium, the present criminal case was registered against the accused, by means of FIR No.100 dated 11.07.2012, on accusation of having committed an offence punishable under Section 18 of the Narcotic Drugs & Psychotropic Substances Act, 1985, by the police of Police Station Shambhu, District Patiala.

Having completed all the codal formalities, the sample was sent to the office of Chemical Examiner, Punjab Govt.Kharar, District SAS Nagar, Mohali. The Chemical Examiner found the lesser quantity of Morphine than the prescribed limit in the sample of opium vide report (Annexure P-2).

Sequelly, taking the benefit of report(Annexure P-2) of the Chemical Examiner, now petitioner-accused Karu Lal has preferred the instant petition for the grant of regular bail in the indicated case.

During the course of hearing of the petition, learned State Counsel has submitted that having raised some serious doubts with regard to the validity and genuineness of the chemical report(Annexure P-2), the investigating officer has already moved an application in the Court of Special Judge, Patiala, for re-sampling and re-testing of the sample from the Central Laboratory, Chandigarh, a copy of which is taken on

record as Annexure "RX". Since, the State has raised suspicion about the genuineness and validity of the report, to my mind, otherwise it would be expedient in the interest and justice would be subserved, to re-test the sample in order to decide the real controversy between the parties. Learned counsel for the petitioner-accused did not raise any serious objection in this relevant connection.

Therefore, SHO, Police Station Shambhu, District Patiala, is hereby directed to draw fresh sample, strictly in accordance with the relevant rules, from the bulk of opium recovered from the accused in this case and sent the same to Central Laboratory, Chandigarh, personally.

6. At the same time, the Director, Central Laboratory, Chandigarh, is directed to chemically examine the fresh sample under his personal supervision, as expeditiously as possible and to hand over the report, to enable the concerned SHO, to place it on record before the next date of hearing, positively.

Adjourned to 23.09.2013 for arguments and to await the report of the Chemical Examiner.

A copy of this order be given dasti to the learned State Counsel under the signatures of Bench Secretary, for its strict compliance."

In pursuance to the said order, sample was sent for reanalysis and the percentage of morphine, on reanalysis in the sample, was found to be different which resulted in the lodging of the present FIR against the petitioners. Order dated 27.8.2013

(Annexure P5) passed by this Court was challenged by petitioner No.1 before the Apex Court and the said order was set aside vide order dated 16.12.2013 (Annexure P7). The operative part of the said order reads as under:-

“In the present, we find that the State has failed to show any ground to doubt the earlier chemical test of the ceased opium and no ground given to re-test and re-sampling of the opium. It is subsequent stage of trial such direction has been given to go for second sampling. For the reasons aforesaid, we set aside the order dated 27th August, 2013 and direct the court not to rely on the second report which was ordered to be provided without any valid ground.”

State filed a review petition against the said order and the same was dismissed vide order dated 23.9.2014 (Annexure P9). The said order reads as under:-

“Delay condoned.

We have carefully perused the Review Petition and the connected papers. We are convinced that the orders against which review has been sought, does not suffer from any error apparent, warranting its consideration.

The Review Petition is, accordingly, dismissed.”

It is in the present case, the Apex Court had found the earlier report submitted by the Chemical Examiner to be genuine. Admittedly, petitioners are in custody since 18.11.2013. Challan has already been presented in this case and conclusion of trial may take time.

In the facts and circumstances of the present case and, without expressing any opinion on the merits of the case, it would be just and expedient to order the release of the petitioner on bail.

Accordingly, this petition is allowed. Petitioners are ordered to be admitted to bail subject to the satisfaction of Chief Judicial Magistrate, Sahibzada Ajit Singh Nagar (Mohali).

**(SABINA)
JUDGE**

January 12, 2015
arya