

**HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-7148-2015 (O&M)
Date of Decision: 14.10.2015

Sachin Sardana

... Petitioner

VS.

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR.JUSTICE P.B. BAJANTHRI

- 1. Whether Reporters of 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. J.S. Bedi, Senior Advocate with
Mr. Lovekirat Singh, Advocate for the petitioner

Ms. Reeta Kohli, Addl. AG Punjab with
Mr. Vaibhav Sharma, DAG Punjab

Surya Kant, J.

(1) The petitioner seeks his release on regular bail in FIR No.69 dated 16.04.2013 registered U/S 22/25-A/27A/29/61/85 of NDPS Act, 420,467,468,471 IPC at Police State Fatehgarh Sahib.

(2) As per the allegations contained in the FIR, the police party led by Inspector Davinder Kumar was patrolling near T-point, Saddo Majra, District Fatehgarh Sahib. A Qualis vehicle of white colour bearing Regd. No.PB-05-K-7070 came from the side of Village Kotla Bhai, which was stopped at the barrier. It was being driven by a young man who disclosed his name as Davinder Singh @ Happy s/o Baljit Singh. Search was conducted and 8½ kg ephedrine was recovered from a polythene envelope lying in the

trunk of the vehicle. Davinder Singh was arrested and during interrogation, more incriminating material was recovered from him. It was revealed that Davinder Singh @ Happy was actually the driver of Jagdish Singh @ Bhola who is stated to be the kingpin of drug mafia. Jagdish Singh @ Bhola was also later on arrested and during his interrogation on 02.12.2013, Bhola is said to have disclosed names of various associates like Dev Raj @ Dev Behal r/o Delhi, Chuni Lal Gaba etc. It appears that Chuni Lal Gaba made a confessional statement attributing the active role of Manager of their factory – Suresh Kumar s/o Ram Lubhaya, who was arrested on 07.12.2013. He was interrogated on the same day and is said to have named Davinder Kant Sharma. Dev Raj @ Dev Behal was arrested on 07.12.2013 and during his interrogation he allegedly named Davinder Kant Sharma – proprietor of Patli Dabur Healthcare Pharmaceutical Unit. Davinder Kant Sharma was also arrested and during interrogation on 24.06.2014, he is said to have mentioned the petitioner's name. Arrest warrants were thus obtained against the petitioner and he was arrested on 28.06.2014 from Delhi. The petitioner has been admittedly running a chemist shop at Rishi Nagar, Shakur Basti, Delhi. It appears from the contents of the report filed under Section 173 CrPC that Davinder Kant Sharma used to supply pseudoephedrine to the petitioner.

(3) The petitioner is alleged to have made a disclosure statement on 30.06.2014 and got recovered 1kg narcotic powder

and 5kg pseudoephedrine “from Sitara Dhaba near Karnal”. The witnesses of the recovery are two Head Constables Amarjit Singh and Harphool Singh of Police Station Kotwali Nabha. The intoxicant powder claimed to have been recovered at the instance of the petitioner contained 89.82% Diphenoxylate hydrochloride.

(4) The petitioner seeks his release on bail on the grounds, *inter alia*:-

- (i) He has been falsely implicated on the basis of confessional statement of a co-accused which is inadmissible;
- (ii) The petitioner has no concern with any ‘controlled substance’ as he runs a chemist shop only;
- (iii) The petitioner is in custody from last more than one year and three months;
- (iv) No other case is registered against him under the NDPS Act;
- (v) The alleged recovery is highly doubtful as the petitioner is a resident of Delhi and was arrested from there only. The so-called recovery has been planted after two days of his arrest from a Dhaba (restaurant) near Karnal (Haryana);
- (vi) The police is conspicuously silent as to why no case has been registered against the proprietor of the Dhaba from where the alleged contraband was recovered;

(vii) Though the recovery is claimed to have been made from a public place, yet the witnesses are two police officials only;

(5) Learned State counsel, on the other hand, opposed the petitioner's prayer on the ground that the contraband recovered at his instance is of 'commercial quantity' and the Narcotic Control Bureau, Delhi Zonal Unit has vide its memo dated 06.08.2015 informed that "the firm M/s Navroz Pharmaceuticals, A-196, Ground Floor, Rishi Nagar, Shakur Basti, Delhi-34 has not been issued any authorization/Registration to deal with pseudoephedrine from this office and no request for the Registration of the same is pending". As the petitioner is involved in the illicit trading of pseudoephedrine, a *prima facie* case under the NDPS Act is made out against him.

(6) Having heard learned counsel for the parties, we are satisfied that the petitioner deserves the concession of bail. He runs only a chemist shop and not a pharmaceutical unit. He is not named in the FIR but has been implicated on the confessional statement of a co-accused, the veracity whereof is yet to be tested. Since the petitioner is alleged to have got recovered contraband from or near the premises of a running dhaba (restaurant), it would be debatable as to who was in the 'conscious possession' of such contraband? The petitioner is not involved in any other NDPS case. The initial onus would be on the prosecution to establish that the petitioner had no place in Delhi to hide the

contraband or in what circumstances he was able to hide it at Sitara Dhaba so secretly that none including those who run that dhaba or hundreds of customers visiting that place could not detect it. Similarly, when did the petitioner earlier visited Sitara Dhaba and how many such other hide outs were used, would also be determined by the Special Court in due course of time. In such like situation, it is difficult to apply the rigors of Section 37(1)(b)(ii) of the NDPS Act.

(7) For the reasons afore-stated and without expressing any views on merits, this petition is allowed and the petitioner is directed to be released on bail on furnishing bail bonds to the satisfaction of the concerned CJM, Patiala.

(Surya Kant)
Judge

14.10.2015

vishal shonkar

*

(P.B. Bajanthri)
Judge