

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM No. M-1083 of 2016 (O&M)

Date of Decision: 18.01.2016

Surinder Kumar

--Petitioner

Versus

State of Punjab

--Respondent

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. P.S. Sekhon, Advocate for the petitioner.

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

TEJINDER SINGH DHINDSA.J

The present petition filed under Section 439 Cr.P.C seeking the benefit of regular bail to the petitioner in case F.I.R. No.148 dated 28.6.2011 under section 22 of N.D.P.S Act, registered at Police Station, Sadar Dhuri, District Sangrur, shows a deplorable state of affairs.

As per prosecution version, an alleged recovery of 1650 grams of intoxicating powder was effected from the petitioner on 28.6.2011. Samples having been sent to the Chemical Examiner, a report was furnished on 16.8.2011 returning a finding that the powder only contained paracetamol. Based on such report the Investigating Officer on 5.12.2011 recommended furnishing of a challan under the Drugs and Cosmetics Act. Such recommendation was even accepted by the S.P. concerned on 31.12.2011.

Intriguingly, prosecution having remained silent for a period of more than two years, moved an application for returning of the second sample for the purpose of sending the same to the C.F.S.L, Chandigarh for a re-analysis. Such application was dated 29.1.2014 and came up for consideration on 29.1.2014 itself before the C.J.M., Sangrur. Vide order of

the same date i.e. 29.1.2014 and without even issuing notice in the application, prayer was allowed. The order has been appended as Annexure P-3 along with the present petition. The contents thereof are not disputed by learned State counsel.

On the strength of order dated 29.1.2014, samples were sent for re-analysis and in the second report furnished by the Chemical Examiner dated 26.9.2014, the samples were stated to contain Dextropropoxyphene, Acetaminophen, Carisopdol and Dicyclomine.

Learned State counsel would seek to justify such course of action on the strength of order dated 27.8.2013 passed by this Court in CRM No. M-18861 of 2013 (Karu Lal Vs. State of Punjab.).

The order passed by this Court in Karu Lal's case was carried to the Hon'ble Apex Court and while referring to the judgement rendered in **Thana Singh Vs. Central Bureau of Narcotics, 2013 (2) SCC, 590**, the order dated 27.8.2013 directing re-sampling and re-analysis, was set aside. In **Thana Singh's** case (supra), the Hon'ble Apex Court had deprecated the practice of re-testing/re-sampling and had directed that such request shall not be entertained under the N.D.P.S Act and would be permitted only in exceptional circumstances and for cogent reasons to be recorded by the Presiding Officer.

Adverting back to the facts of the present case the application filed by the prosecution seeking re-analysis was moved on 29.1.2014 and has been allowed on the same very date by the C.J.M., Sangrur without even issuing notice in such application. C.J.M., Sangrur did not even refer the application to the Special Judge. No reasons whatsoever much less cogent reasons have been furnished in the order dated 29.1.2014 while accepting

the application of the prosecution as regards re-analysis.

The entire procedure adopted in the present case leaves much to be desired. In fact such action may be even construed as contemptuous and against the directions of the Hon'ble Apex Court in **Thana Singh's** case (supra).

The petitioner has been in custody since 9.12.2015.

In view of the observations noticed herein above, the petitioner is held entitled to the benefit of regular bail. Present petition is, accordingly, allowed. Petitioner be enlarged on bail subject to satisfaction of C.J.M./Duty Magistrate, Sangrur.

Petition disposed of.

(TEJINDER SINGH DHINDSA)
JUDGE

18.01.2016
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