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

CRM-M-27361 of 2016

Date of decision: September 15, 2016

Kamal Narang

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: Mr. Naresh Jain, Advocate
for the petitioner.

Ms. Tanushree Gupta, DAG haryana.

A.B. CHAUDHARI, J (Oral)

Heard learned counsel for the rival parties.

In FIR No.197 dated 21.04.2013, under Sections 21, 22, 27-A of the Narcotic Drugs and Psychotropic Substance Act, 1985, registered at Police Station, City Fatehabad, District Fatehabad, petitioner was arrested on 14.05.2016 and since then he is under trial.

The investigation was made thrice by the various police officers and it was found that at the most, the offence could be made out under the Drugs and Cosmetic Act and not under the NDPS Act, that is why the petitioner was not challaned. When the matter sent to the Sessions Court on fourth occasion on 15.01.2016, as per the request made by SP, Fatehabad before the Sessions Courts, since he was busy in elections, the investigation was handed over to Ganga Ram Puna, ASP, Fatehabad. It would be appropriate to quote Para 11

of the reply by way of affidavit of Ganga Ram Punia, IPS, Assistant Superintendent of Police (HQ), Fatehabad as under:-

“That thereafter on 15.01.2016 (Annexure R-5) the learned Sessions Judge directed that this case will be investigated by Ganga Ram Punia, ASP, Fatehabad and on this direction, the present case was investigated by Ganga Ram Punia and found following averments:-

That during investigation conducted by ASP (HQ) Fatehabad as per Hon'ble Court's order dated 15.01.2016 keeping in view the Hon'ble High Court's judgments **“Rupesh Singla and another Vs State of Punjab 2014 (4) RCR (CRM) 284 and Manjit Kumar Vs The Director of Revenue Intelligence CRM-M-1866 of 2012 date of decision 17.08.2012”**, it was found that recovered drugs were well within ambit of N.D.P.S. Act 1985 as F.S.L. Report dated 27.06.13 revealed that various chemicals such as Dextropropoxyphene, Diphenoxylate and Codeine were detected in the samples sent for examination and entry of these chemicals is at Sr. No. 33, 44 and 28 in schedule provided. On 21.04.2013 when the drugs were recovered from the bus, neither Form No. 6 as described in Rule 67 of N.D.P.S. Rules 1985 nor, any cash memo/ invoice/ bill was shown by bus driver which is mandatory requirement. Therefore keeping in view the facts of the case and provisions of NDPS Act, 1985; Rules made there under (NDPS Rules, 1985) it was found that accused Jagdish Prasad and Kamal Narang have violated the provisions of Rule 67 of NDPS Rules, 1985 which is punishable under section 22 of N.D.P.S. Act 1985. The report u/s 173 Cr. P.C. against both the accused, Jagdish Parshad and Kamal Narang present petition was submitted before the Court on 14.06.2016 for violating the rule 67 of

the NDPS Rules, 1985. As on 21.04.2013 when the drugs were recovered, neither form 6 as described in Rule 67 of NDPS Rules 1985 nor any cash memo/ invoice/ bill was shown by the bus driver which is mandatory requirement.

The case diary was completed by ASP on 22.04.2016 and he directed the SHO to arrest the accused Kamal Narang on this direction, accused Kamal Narang has been arrested and SHO has presented the challan u/s 173 Cr. P.C. on 14.06.2016.”

A perusal of the said reply by way of affidavit merely show that there is violation of provisions of Rule 67-Transport of Psychotropic Substance of NDPS Rules. In this case, it is seen that the prosecution was not sure whether the offence could be made under NDPS Act or Drugs and Cosmetic Act and that was done thrice and on the fourth occasion again, as per the Rule 67-Transport of Psychotropic Substance of the NDPS Rules, the accused did not have the relevant form-6 as described by Rule 67 of NDPS Rules nor any cash memo/ invoice/ bill and the said provision being mandatory, the petitioner is not entitled to bail.

In my considered opinion, keeping in view the entire above background and even upon the investigation made by Ganga Ram Punia, ASP (HQ), Fatehabad, it is prima-facie difficult whether the offence under NDPS Act or Drugs and Cosmetic Act is constituted. Be that as it may, the petitioner being in jail since 14.05.2016, liberty cannot be curtailed only on suspicion and in the light of the factual background above. Learned State counsel submits that the petitioner has been convicted in a case, for which the counsel for the petitioner

pointed out a reasoned order dated 26.05.2016 made by this Court granting suspension of sentence. I have perused that order and find that in the above circumstances, the petitioner would be entitled to grant bail, subject to the conditions which the learned trial Judge would be entitled to impose. The petitioner would not commit any similar type of offence.

Hence, this petition is allowed. Petitioner be released on bail subject to the satisfaction of the Chief Judicial Magistrate/Duty Magistrate concerned which shall be entitled to impose such conditions for releasing the petitioner on bail as it deem fit and proper. Petitioner shall not tamper with the prosecution evidence or threaten the prosecution witnesses.

(A.B. CHAUDHARI)
JUDGE

September 15, 2016

mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No