

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CRM-M-4819-2017

Date of decision : 14.03.2017

Gurmeet Singh

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr.I.P.S. Kohli, Advocate
for the petitioner.

Mr. Rajesh Mehta, Addl. A. G. Punjab.

AMOL RATTAN SINGH, J.(ORAL)

Pursuant to the order dated 22.02.2017, Mr.Ishwar Singh, IGP, State Narcotics Cell Bureau, Punjab, is present in Court and has stated that efforts are now being made to make a videography recording of at least those cases in which information is received that a heavy amount of contraband is being smuggled.

Upon query as to why videography is not done in all cases where secret information is stated to be received and check posts / nakas are laid down on road in apprehension of seizure of contraband, he submits that the matter has been taken up and shall be pursued.

As regards the mandate of sub section 5 of Section 50, and Section 52-A, of the Narcotic Drugs and Psychotropic Substances Act, 1985, he has submitted that a circular has been issued and shall be issued again to the effect that the sampling has to be done before a Magistrate.

Even as regards seizure of contraband, where there is actually no threat of an accused disposing of the contraband, such accused being a single person apprehended by a police party of 4 to 5 persons, the accused would be taken to the nearest gazetted officer or Magistrate, in terms of the aforesaid provision contained in the Act.

The statement made by the officer is accepted and it is expected that efforts would be made to genuinely try and apprehend persons with contraband in genuine circumstances and the provisions of the Act would be followed.

That having been said, as regards the present petition, the petitioner is seeking bail, upon having been apprehended on 26.05.2015, carrying 110 grams of Diphenoxylate Hydrochloride (per the FIR), after which he was admitted to interim bail on 02.06.2015 but upon the report of the Forensic Science Laboratory having been received on 26.05.2016, his bail application was eventually dismissed on 12.09.2016.

He is thereafter stated to have approached this Court seeking anticipatory bail on medical grounds, which was granted to him upon the condition of him surrendering on or before 28.11.2016, which he is stated to have done.

In the aforesaid background, keeping in view the fact that the petitioner has not misused the concession of bail in the past and at least prima-facie it is shown that he being a single person apprehended by a police party, there was thus apparently no danger of his disposing of the contraband before it could be seized, it is not understood as to why he was not taken before a gazetted officer or Magistrate. Thus, prima-facie, there would appear to be non-compliance of sub section 5 of Section 50 of the

Act of 1985. Further, prima facie, no sampling is seen to be done before a Magistrate as per the directions given by the Supreme Court in *Union of India vs. Mohanlal & another, 2016(1) R.C.R. (Criminal) 858*.

In view of the above, the petition is allowed and the petitioner would be admitted to bail upon his furnishing adequate bail bonds and surety bonds to the satisfaction of the learned trial Court.

However, nothing said hereinabove will be taken to be a final finding of this Court on the merits of the case, which would be obviously subject matter of the trial and evidence led before the trial Court.

Disposed of.

(AMOL RATTAN SINGH)
JUDGE

March 14, 2017.

Davinder Kumar

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No