

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

CRM-M-21317-2018
Date of decision:29.10.2018

Soma Ram @ Soma Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM : HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Anupam Gupta, Advocate
for the petitioner.

Mr. A.S. Sandhu, Addl. A.G., Punjab.

GURVINDER SINGH GILL, J.

The petitioner seeks regular bail in a case registered vide FIR No.169 dated 30.08.2017 under Sections 22 of Narcotic Drugs and Psychotropic Substances Act, 1985, at Police Station Maur, District Bathinda.

The allegations, in nutshell, are that on 30.8.2017 when a police party headed by SI Gurdarshan Singh was patrolling near Bus-
Stand Ghuman Kalan, they saw a young man coming from the side of
Sukha Singh Wala who on seeing the police party started moving towards

the fields in order to avoid the police party. On suspicion, the said person was apprehended by the police who disclosed his name as Sona Ram. Upon his search, a plastic bag containing 16 injections of Buprenorphine 2 ML each were recovered. Consequently the aforesaid FIR was lodged in respect of which the petitioner is in custody.

The learned counsel for petitioner has submitted that in the present case investigation has been conducted by the same officer who effected recovery which is violative of principles of fair trial as has been held by Hon'ble the Supreme Court in a case reported as 2018 AIR (SC) 3853 Mohan Lal Vs. State of Punjab. It has further been submitted that since all the recovered injections were not sent for chemical analysis therefore at best the petitioner can be held liable only in respect of the samples which had been got analysed as there is no guarantee that the remaining injections allegedly recovered also contained contraband and since the quantity of contraband which was analysed would not fall within the category of 'commercial quantity', Section 37 of the NDPS Act would not apply and the petitioner is thus entitled to be released on bail. The learned counsel has also submitted that in any case Rule 66 of NDPS Rules 1985 provides that any person can possess up to 100 dosage units of such like Psychotropic substance for his personal medical use and thus possession of 16 injections would not be an offence. It has thus been prayed that the petitioner is entitled to be released on bail.

On the other hand, the learned State counsel, in reply to the contention that the matter had been investigated by the recovery officer himself has submitted that the police officer who apprehended the

petitioner could not have known for certainty at that point of time as to whether the petitioner had committed any offence and it was only after the search of the petitioner had been effected that it came to be known that he was carrying contraband constituting an offence under NDPS Act but by the said time the relevant and important documents i.e. the document pertaining to extension of offer under Section 50 of NDPS Act, recovery memo and consequently arrest memo, 'ruqa' etc had already been prepared. The learned State counsel cites a judgment of Constitution Bench of Hon'ble the Supreme Court rendered in State of Punjab Vs. Baldev Singh 1993(3) RCR (Criminal) 533 wherein it has been held as follows:

“ The provisions of Sections 100 and 165 Criminal Procedure Code are not inconsistent with the provisions of the Narcotic Drugs And Psychotropic Substances Act and are applicable for effecting search, seizure or arrest under the Narcotic Drugs and Psychotropic Substances Act also. However, when an empowered officer carrying on the investigation including search, seizure or arrest under the provisions of the Code of Criminal Procedure comes across a person being in possession of the narcotic drugs or the psychotropic substance, then he must follow from that stage onwards the provisions of the Narcotic Drugs And Psychotropic Substances Act and continue the investigation as provided thereunder. If the investigating officer is not an empowered officer then it is expected of him that he must inform the empowered officer under the Narcotic Drugs And Psychotropic Substances Act, who should thereafter proceed from the stage in accordance with the provisions of the Narcotic Drugs And Psychotropic Substances Act. In Balbir

Singh's case after referring to a number of judgments, the Bench opined that failure to comply with the provisions of Criminal Procedure Code in respect of search and seizure and particularly those of Sections 100, 102, 103 and 165 *per-se* does not vitiate the prosecution case. If there is such a violation, what the courts have to see is whether any prejudice was caused to the accused. While appreciating the evidence and other relevant factors, the courts should bear in mind that there was such a violation and evaluate the evidence on record keeping that in view."

As regards the contention that each of the recovered injection had not been sent for chemical analysis, the very purpose of drawing representative sample is that the entire quantity is not required to be sent for chemical analysis which sometimes is not practicable on account of the volume or nature of the recovered quantity. In any case it would be only at the stage of trial after evidence has been led by the prosecution and also by the accused that any definite finding may be returned that the accused may be able to get any benefit to the effect that the samples cannot be said to be representative of the recovered contraband.

As regards the contention of the learned counsel that Rule 66 of NDPS Rules 1985 provides that any person can keep up 100 dosage units of psychotropic substance in case the same is for personal medical use, there is nothing on record to suggest that the medical condition of the petitioner was such that he had been advised the aforesaid injections for his medical treatment. In any case a coordinate Bench of this court in a judgement reported as 2018(5) RCR 883 Sarbjit Singh @ Sabbi vs. State of Punjab, while dealing in detail with Rule 66 of NDPS Rules

Rule 2 of Rule 66 of NDPS Rules 1985, he is not required to produce any medical prescription issued by a registered medical practitioner and that it shall be presumed that the same was for his personal use. It was further held therein that recovery of of 25 ampules of Buprenorphine would fall within ambit of 'commercial quantity' and thus rigors of Section 37 of NDPS Act would be attracted. While observing that Rule 66 militates against provisions of the NDPS Act, the bail application was declined, irrespective of provisions contained in Rule 66 of NDPS Rules.

The learned State counsel has submitted that in any case the grant of bail is governed under provisions of Section 37 of NDPS Act and that in view of the quantity recovered, it cannot be said that the petitioner is not guilty or that if released on bail he is not likely to commit the similar offence again.

I have considered rival submissions addressed before this Court.

Bearing in mind the provisions of section 37 of NDPS Act and the present case being a case of recovery of “commercial quantity” and that it cannot be said at this stage that the petitioner is innocent or that if released on bail he would not commit similar offence again, this Court does not find any ground for release of the petitioner on bail. The legal submissions raised on behalf of the petitioner are matters to be considered at the stage of trial in context of the entire evidence led by the prosecution and the accused and no finding as regards vitiation of investigation or trial can be returned at this stage.

There is no merit in this petition and the same is hereby
dismissed.

29.10.2018
kamal

(GURVINDER SINGH GILL)
JUDGE

Whether reasoned / speaking? **Yes / No**

Whether reportable? **Yes / No**