

In the High Court of Punjab and Haryana at Chandigarh

CRM-M-25953-2017 (O&M)
Date of Decision:-29.10.2018

Gurpreet Singh @ Gopi Petitioner

Versus

State of Punjab Respondent

CORAM: Hon'ble Mr. Justice Gurvinder Singh Gill

Present:- Mr. Rishu Mahajan, Advocate, for the petitioner.

Ms. Simranjeet Kaur, A.A.G. Punjab.

Gurvinder Singh Gill, J.

Petitioner Gurpreet Singh @ Gopi has filed this petition seeking grant of regular bail in respect of a case registered against him vide FIR No.200 dated 27.10.2016, under Sections 21, 22, 27-A, 29 of NDPS Act, Police Station, C Division, Amritsar.

The allegations, in nutshell, are that on 27.10.2016 when a police party headed by ASI Paramjit Singh was patrolling in the area of main bazaar Gujarpura, Amritsar, a Sikh youth came out of street near Burial Ground and who on noticing the police party suddenly turned back. The said youth was apprehended by the police party and upon inquiry he disclosed his name as Gurpreet Singh. The said person was carrying polythene bag in his right hand. He was extended an offer under in terms of Section 50 of NDPS Act but he reposed faith in the officer at the spot. A search of the polythene bag, carried by the said person

yielded recovery of intoxicating powder weighing 300 grams which later

was found to contain Alprazolam. Another bag was also found in the polythene bag from which an amount of ₹ 1,20,000/- was recovered, for which the said person could not furnish any satisfactory explanation. Consequently, the present FIR was lodged against the petitioner.

Learned counsel for the petitioner has submitted that he has falsely been implicated in the present case and that in fact the entire recovery in the present case stands vitiated since the case has been investigated by the same officer who had effected recovery of alleged contraband. Learned counsel in order to hammer forth his submission places reliance upon a judgment of Hon'ble the Supreme Court reported as 2018 AIR (SC) 3853 Mohan Lal Vs. State of Punjab.

On the other hand, learned State counsel while opposing the bail application has submitted that the recovery effected in the present case i.e. Alprazolam weighing 300 gms falls within the category of "commercial quantity" and that it cannot be said that the recovery has been planted upon the petitioner since a substantial amount of ₹ 1,20,000/- was also recovered from him at the spot for which he could not furnish any justifiable explanation.

As regards the contention of petitioner that the matter has been investigated by the recovery officer himself, it has been submitted that the police officer who apprehended the petitioner, on the basis of suspicion, 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.”

The learned State counsel has further 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.

Having considered rival submissions addressed before this Court and 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.

October 29, 2018

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(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No