

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M No.27285 of 2017

DATE OF DECISION: MARCH 13, 2018

HEM RAJ

...PETITIONER

VERSUS

STATE OF HARYANA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU.

PRESENT: MR. ANMOL RATTAN SIDHU, SR.ADVOCATE
WITH MR. PRATHAM SETHI, ADVOCATE
FOR THE PETITIONER.

MR. VIKAS MALIK, DAG, HARYANA.

MAHABIR SINGH SINDHU, J.

CRM-36537-2017

This is an application for placing on record copy of order dated 10.10.2017, 17.10.2017 and 18.10.2017 [Annexure P-5 (Colly)] and exemption from filing certified/typed copy of the same.

For the reasons stated in the application the same is allowed subject to just exceptions and above documents are taken on record as Annexure P-5. Registry is directed to tag the same at the appropriate place.

Main Case

The petitioner has filed the present petition under Section 439 of the Code of Criminal Procedure (for short 'Cr.P.C.') for grant of regular bail in FIR No.99 dated 12.2.2017, registered under Section 22-C/61/85 of NDPS Act, Police Station Ratia, District Fatehabad.

It is contended by learned counsel for the petitioner that the

alleged occurrence is dated 12.2.2017, report under Section 173 Cr.P.C. was submitted on 2.6.2017 and the petitioner is in custody since 10.3.2017. Further contended that as per allegations of the prosecution, the petitioner threw the bag containing contraband and fled away by scaling the wall. In the site plan (P-4), no wall has been shown. It was further contended that it is not believable that sole accused can ran away in the presence of the police party and even nothing has been recovered from the petitioner and therefore, it cannot be said that he was in conscious possession of the contraband.

Learned State counsel opposed the bail application and submitted that recovery is commercial in nature and petitioner is an habitual offender.

Heard learned counsel for the parties and perused the paper book.

It is the case of the prosecution that on 12.2.2017, Police party headed by ASI Om Parkash was on patrolling duty in the area of police station Ratia and when going from village Mehmra to Badalgarh, then ASI Om Parkash received a secret information that Hem Raj son of Chandi Ram caste Arora resident of village Badalgarh is running a clinic illegally and in the garb of the same selling intoxicants and if raid is conducted, he could be caught red handed. The information was found reliable and ASI Om Parkash informed Dr. Vijay Jain SMO, Ratia and briefed him and requested to accompany the police party and consequently they all reached the spot immediately in village Badalgarh and raided the clinic of petitioner which was being run at his residence. But upon seeing the police party, he ran

away alongwith a plastic bag on his right shoulder by scaling the wall and threw the plastic bag in front of gate of clinic and escaped after getting the benefit of darkness. The petitioner was identified by ASI Om Parkash when he turned his face as he was earlier known to him and upon the checking of the bag, it was found containing 2500 tables of Alprasave 0.5 in first polythene bag, 380 tablets of Alprazolam Digifresh 0.5 mg. in second polethene bag, 250 tablets of AT 2 mg. in third polythene bag, 552 capsules Sapsmo Proxywon in fourth polythene bag and 511 tablets of Pindol Forte in fifth polythene bag and 6190 tablets of Tramaset from another polythene bag. The entire contraband was checked by Dr.Vijay Jain who gave his opinion that the entire contraband weighed 682 gms. and that the recovered tablets of Alprasave 0.5 mg, tablets of AT 2 mg. and tables of Alprazolam Digifresh 0.5 mg. Come under the purview of NDPS Act and other tablets and capsules come under the purview of Drugs Act and after taking into possession the sample strips, the remaining contraband was converted into a parcel which was sealed with the seal 'OP'. FSL report (Annexure R-1) in the case was received on 4.10.2017 and as per the report, all the samples were found to be positive containing the salt of Lorazepam, Alprazolam, Tramadol, Tramadol and Paracetamol, Tramadol-Acetaminophene-Dicylomine medicines.

A perusal of the case file reveals that the petitioner is an habitual offender and there is another case pending bearing FIR No.124 dated 29.12.2013 under Section 22(C) of NDPS Act Police Station Boha, District Mansa, Punjab. Still further a complaint No.14 of 2016 under

Section 18 of Drugs and Cosmetics Act is also pending against the petitioner before learned trial Court. The petitioner was duly recognized by ASI Om Parkash as he was earlier known to him, but fled away by taking the benefit of darkness as occurrence is alleged at 9.00 p.m. on 12.2.2017. No doubt, the charges have not been framed in this case as the original record of the trial Court had been summoned by the co-ordinate Bench of this Court on 14.9.2017. The contentions of the learned counsel for the petitioner that no wall has been shown in the site plan (Annexure P-4) and he was not in conscious possession of the contraband are subject matter of trial.

In view of discussion made hereinabove, no case is made out to release the petitioner on bail as he being an habitual offender is likely to repeat the same thing. Accordingly, the petition stands dismissed.

Lower Court records be returned back immediately. Learned trial Court is directed to complete the trial expeditiously.

The above observations shall not be construed as an expression of opinion on merits of the case.

March 13, 2018
Gulati

(MAHABIR SINGH SINDHU)
JUDGE

Whether Reportable : Yes

Whether Speaking/Reasoned : Yes