

In the High Court of Punjab and Haryana at Chandigarh

CRM-M-31720-2018 (O&M)

Date of Decision:-9.8.2018

Ranbir Singh

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Preetinder Singh Ahluwalia, Advocate for the petitioner.

Ms. Ruchika Sabherwal, Assistant Advocate General, Punjab.

GURVINDER SINGH GILL, J.

1. The petitioner Ranbir Singh seeks grant of regular bail in a case registered against him vide FIR No.71 dated 27.3.2018 under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Patran, District Patiala for having been found in conscious possession of 40 bottles each having capacity of 100 milliliters, marked as ONEREX, containing *Codeine Phosphate*.
2. The facts, in nutshell, are that the petitioner along with one Shanky were apprehended on 27.3.2018 while travelling in a car bearing registration No.HR-32-K-5114. A search of the car by the police led to recovery of 7200 capsules containing *Tramadol Hydrochloride* and 40 bottles of ONEREX containing *Codeine Phosphate*. While ONEREX would attract penal provisions of NDPS Act, the capsules containing TRAMADOL may not attract penal provisions of the Act as it was only recently by way of notification dated 26.4.2018 that TRAMADOL has been included in list of

Psychotropic Substances, whereas the recovery in the present case was made on 27.3.2018.

3. After conclusion of investigation, the police presented a challan against Shanky on 28.5.2018 while the present petitioner was kept in column no. 2. On 19.5.2018 the police, having found the petitioner innocent, had filed an application seeking discharge of the accused which was initially adjourned to 25.5.2018 and thereafter to 4.6.2018. The learned trial Court, however, while declining the said application proceeded to frame charges against the present petitioner along with his co-accused Shanky for offence under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 vide order dated 4.6.2018. Thereafter, the petitioner filed an application seeking grant of bail which was dismissed by the learned Special Court vide order dated 10.7.2018.
4. Notice of this petition was issued to the State. The learned Assistant Advocate General has opposed the same.
5. The learned counsel for the petitioner has submitted that it was pursuant to a detailed inquiry conducted by the police that the petitioner had been declared as innocent and that it had been found that the petitioner was merely a taxi driver whose taxi had been hired by co-accused Shanky. The learned counsel has submitted that the police on the basis of inquiry found that the petitioner Ranbir Singh plies his Swift Dezire car as a taxi and that on 27.3.2018, Shanky who is running a medical shop in Narwana, District Jind, had hired his taxi to go to Ludhiana for a fare of ₹ 2400/-. While the petitioner was driving car in question, two bags containing contraband were found lying on the rear seat. It was also reported in the inquiry report

annexed as Annexure P-3 that the petitioner does not have any criminal record and that statements of various others associated with the taxi stand at Narwana and of other respectables of the locality had been recorded, who had all stated that Ranbir Singh is not involved in any drug-trafficking.

6. The learned counsel has further submitted that in fact the police, upon finding the petitioner innocent, had submitted an application on 19.5.2018 for his release from the custody in terms of Section 169 Cr.P.C. and that once such application had been filed, the trial Court had no option but to accept the same and that the learned trial Court, however, fell in error in treating the said application as an application seeking discharge of accused from the case. The learned counsel, in this context, has today filed a photocopy of application dated 19.5.2018 moved by ASI Jajwinder Singh, Police Station Patran, which is taken on record. It has been submitted that “release from custody” and “discharge of accused from the case” are distinct from each other and that the application dated 19.5.2018 has been misconstrued by the trial Court and has not been dealt with in accordance with procedure mandated by provisions of Section 169 of Cr.P.C. The learned counsel, in order to hammer forth his aforesaid submission places reliance upon a judgment of this Court in Shoqin Singh vs. State of Punjab 2004(1) RCR (Criminal) 47.
7. The learned counsel has also submitted that in any case the petitioner cannot be said to be in conscious possession of contraband as the alleged packets containing contraband were lying on rear seat of the taxi driven by petitioner which at that moment had been hired by Shanky. The learned counsel has, thus, submitted that petitioner be released on bail.

8. On the other hand, the learned State counsel has submitted that once the trial Court had taken cognizance and had proceeded to frame charges against the accused, the involvement of the petitioner is *prima facie* evident and that in view of the fact that it is a case of recovery of commercial quantity of contraband, no case for grant of bail is made out.
9. I have considered the rival submissions addressed before this Court.
10. A perusal of the application dated 19.5.2018, copy whereof has been filed today in the Court, shows that the police in the said application has stated that the petitioner, who is in judicial custody be discharged from the same as he had been found innocent. At the stage when the aforesaid application was filed, the status was that challan had not been presented. Subsequently, when challan was presented on 28.5.2018 against the co-accused Shanky, the petitioner was kept in column no. 2, although he was in judicial custody.
11. It was in order to get him released from the said custody that the aforesaid application dated 19.5.2018 had been moved by the police. The said application was apparently in terms of provisions of Section 169 Cr.P.C. This Court in Shogin Singh's case (*supra*) held that where an accused is found innocent upon investigation by the police and there is no evidence to justify his detention, then the police is required to release him and in case, the accused has been produced before a Magistrate, then the Magistrate has to release the accused from custody under Section 169 Cr.P.C. and that release from custody does not amount to discharge of accused.
12. Hon'ble the Supreme Court in (2003) 6 SCC 195 Union of India vs. Parkash P. Hinduja held as follows :-

“13. The formation of the opinion whether there is sufficient evidence or reasonable ground of suspicion to justify the forwarding of the case to a Magistrate or not as contemplated by Sections 169 and 170 is to be that of the officer in charge of the police station and a Magistrate has absolutely no role to play at this stage.....

14. The Magistrate is no doubt not bound to accept a final report (sometimes called as closure report) submitted by the police and if he feels that the evidence and material collected during investigation justifies prosecution of the accused, he may not accept the final report and take cognizance of the offence and summon the accused but this does not mean that he would be interfering with the investigation as such. He would be doing so in exercise of powers conferred by Section 190 Criminal Procedure Code. The statutory provisions are, therefore, absolutely clear that the Court cannot interfere with the investigation.”

13. Discharge in terms of Section 169 Cr.P.C. cannot be construed as discharge in terms of Section 227 Cr.P.C. A person discharged in terms of Section 169 Cr.P.C. can be arrested again consequent upon some evidence having been found against him.

14. In view of the aforestated legal position, the course open to the trial Court when the application was filed on 19.5.2018 was to release the accused from the custody. However, the trial Court instead of doing so when the application was presented adjourned the matter and later proceeded to examine the application on merits of the case. By doing so, it has not proceeded in accordance with law. However, at the same time, it also needs

to be observed that the Court was not debarred from summoning the petitioner as an accused when it took cognizance of the matter on 4.6.2018 at the time when framing of charges against co-accused was being considered. Since it is by way of a composite order dated 4.6.2018 that the aforesaid application dated 19.5.2018 was dismissed and charges against the co-accused Shanky were framed, the illegality, in not having immediately acted in terms of Section 169 Cr.P.C., when application was filed on 19.5.2018 loses significance, as the case by that time had proceeded further to a stage when trial Court was also seized of the matter regarding consideration of charge and at which stage it was competent to take cognizance and summon the petitioner to face trial.

15. In any case, in view of the fact that the police during investigation had found the petitioner to be innocent after recording evidence of several persons including those working at the taxi stand and also of other residents of the locality and had reached at a conclusion that the petitioner in fact plies taxi and is not into drugs and narcotics and does not have any past criminal record and that the police had in fact moved an application seeking his discharge from custody, the *prima facie* involvement of the petitioner would be certainly a debatable issue. Given the fact that the petitioner does not have any previous criminal record, there is nothing to suggest that if released on bail, he would indulge in similar offence again.
16. Bearing the aforesaid facts and circumstances, in my opinion, it is a fit case for release of petitioner on regular bail. The petition, as such is accepted and the petitioner is ordered to be released on bail subject to his furnishing bail bonds/surety bonds to the satisfaction of learned trial Court/Chief

Judicial Magistrate/Duty Magistrate concerned. It is, however, made clear

that in case petitioner is found to be indulging in any identical offence while on bail, it will be open to the prosecution to move for cancellation of his bail.

9.8.2018

kamal

**(Gurvinder Singh Gill)
Judge**

Whether reasoned/speaking

Yes / No

Whether reportable

Yes / No