

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CRM-M-34414 of 2018
Date of Decision: 24.09.2018

Bajinder @ Chaudhary

....Petitioner

VERSUS

U.T. of Chandigarh

....Respondent

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. G.S. Sandhu, Advocate
for the petitioner.

Mr. Rajeev Anand, Addl. P.P., UT Chandigarh.

SURINDER GUPTA, J.

The present petition has been filed under Section 439 Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No.239 dated 19.12.2017 registered for the offence punishable under Section 22 of Narcotic Drugs and Psychotropic Substances Act, 1985, at Police Station Mouli Jagran Chandigarh.

Heard.

As per case of prosecution, petitioner was apprehended by ASI Som Raj of Police Station Mouli Jagran on 19.12.2017 and 11 injections of '*Buprenorphine*' and 11 injections of '*Pheniramine Maleate*' were recovered from his possession.

Learned trial Court declined regular bail to petitioner on the ground that weight of drug '*Buprenorphine*' recovered from him was of commercial quantity, as such, he is not entitled to grant of regular bail.

Learned counsel for the petitioner has argued that weight of liquid is to be determined as per its density. It is a matter to be seen at the

time of final disposal of case as to what was the density of liquid and what was its weight.

FSL in its report has given the total weight of liquid in 11 injections as 24.64 gms. There is no reason to discard the opinion of FSL regarding the weight of contraband. However, the petitioner by leading evidence can prove before the trial Court that weight of the contraband is less than 24.64 gms. as given by the FSL. At this stage, I find no reason to accept the submission of learned counsel for the petitioner that weight of liquid in 11 injections as given by the FSL is not correct.

Learned counsel for the petitioner has further argued that provisions of Section 50 NDPS Act have also not been complied in this case as search of the petitioner was not conducted before a Magistrate or a gazetted officer.

The police party headed by ASI Som Raj was not having any secret information about the petitioner and it was a chance recovery. The petitioner was apprehended on the basis of suspicion that he was carrying some stolen article. On opening of green coloured bag in the right hand of petitioner a white coloured plastic bag was found and on opening it injections of contraband were recovered. Firstly this recovery was not made from the person of petitioner and secondly, a Constitution Bench of Hon'ble Apex Court in case of **State of Punjab vs. Baldev Singh and others, 1999 (3) RCR (Criminal) 533**, has observed in para 57 as follows:-

“57. On the basis of the reasoning and discussion above, the following conclusions arise:-

(1) That when an empowered officer or a duly authorised officer acting on prior information is

about to search a person, it is imperative for him to inform the concerned person of his right under Sub-section (1) of Section 50 of being taken to the nearest Gazetted Officer or the nearest Magistrate for making the search. However, such information may not necessarily be in writing;

(2) to (3) xx xx xx xx”

As already discussed, authorized person was not acting on prior information before conducting search of the petitioner, as such, *prima facie* it is made out that there was no occasion for compliance of provisions of Section 50 NDPS Act.

Keeping in view above facts and provisions of Section 37 NDPS Act, I find no reason to extend the benefit of regular bail to the petitioner at this stage.

Dismissed.

It is, however, made clear that all the observations made in this order are only for the purpose of deciding this bail application and nothing observed herein shall be considered as opinion on merits on any issue.

September 24, 2018
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No