

Crl. Misc. No. M-42831 of 2017

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Misc. No. M-42831 of 2017

DATE OF DECISION:04.09.2018

Ashish Sharma

.....Petitioner

Versus

State of Punjab

.....Respondent

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Dr. Anmol Rattan Sidhu, Senior Advocate with
Mr. Raghav Gulati, Advocate
for the petitioner.

Mr. Gaurav Garg Dhuriwala, Sr. DAG, Punjab.

DAYA CHAUDHARY, J.

The present petition has been filed under Section 439 Cr.P.C. for grant of regular bail to petitioner-Ashish Sharma in case FIR No. 0158 dated 1.10.2016 registered under Section 22 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the Act') at Police Station Canal Colony, Bathinda, District Bathinda.

Learned senior counsel for the petitioner contends that the petitioner has falsely been implicated in the case by misusing the process of law, whereas, he was not involved. As per allegations levelled in the FIR, only the suspicion was there in the mind of the investigating officer that the petitioner was having intoxicating substance, whereas, recovery effected has been shown to be of 13 plastic bottles of Corex each weighing 100 ML and

15 strips of intoxicated tablets make Carisoma each containing 10 tablets totalling 150 tablets. Learned senior counsel further contends that out of total recovered 13 bottles and 15 strips, one bottle make Corex and one strip make Carisoma were taken out as sample and parcel was prepared and remaining 12 bottles of Corex and 14 strips of Carisoma were put in the same wrapper and separate parcel of the same was prepared. The petitioner was arrested on 1.10.2016 and thereafter he was released on interim bail as report of chemical examiner was not received. Subsequently on receipt of the chemical examiner report and finding the quantity recovered to be commercial, the petitioner surrendered before the Court and was taken into custody. The regular bail petition filed by the petitioner before learned Additional Sessions Judge, Bhatinda was dismissed only on the ground that alleged recovery falls within the ambit of commercial quantity and it was hit by the rigours of Section 37 of the Act. Learned senior counsel also submits that there is non-compliance of mandatory provisions of Section 50 of the Act. The consent memo prepared at the time of alleged search by the police party was not got signed by the petitioner, which creates doubt about the prosecution version. Not only provisions of Section 50 of the Act have not been complied with but provisions of Section 42 of the Act have also not been followed. It is also the argument of learned senior counsel for the petitioner that no other case of NDPS Act is pending against him. Learned senior counsel has also relied upon the judgments of this Court in the case of **Deep Kumar Vs. State of Punjab** (1997) 2 RCR (Cri) 417, **Amrik Singh Vs. State of Punjab** (1996) 2 RCR (Cri) 311, of Madhya Pradesh High Court in the cases of **Rohit Chadha Vs. State of Madhya Pradesh** 2016 (4) RCR (Criminal) 34 and **Virendra Tiwari Vs. State of Madhya**

Pradesh (MCRC 8210 of 2015 decided on 19.6.2015), in support of his contentions.

Learned counsel for respondent-State has not disputed the submissions made by learned senior counsel for the petitioner. However, by relying upon the division Bench judgment of this Court in the case of **Saleem Mohd. Vs. State of Punjab** 2015 (25) RCR (Criminal) 816 and in the case of **Sarbjit Singh @ Sabbi Vs. State of Punjab** (Crl. Misc. No. M-40371 of 2017 decided on 25.7.2018) contends that in case the recovery effected from the accused falls within the ambit of commercial quantity and petitioner fails to fulfil the conditions laid down under Section 37 of the Act then he is not entitled for grant of regular bail.

Heard the arguments advanced by learned counsel for the parties and have also gone through the contents of the FIR and other documents available on the file.

In the present case, the petitioner has been alleged to be in possession of 13 plastic bottles of Corex and the said quantity is covered by the proviso of Rule 66 of the NDPS Rules, 1985 (hereinafter referred to as 'the Rules'). Rule 66 of the Rules is reproduced as under:-

“66. Possession, etc. Of psychotropic substances, etc.- (1) No person shall sell, purchase, consume or use any psychotropic substance for any of the purpose covered by the 1945 Rules, unless he is lawfully authorized to possess such substance for any of the said purpose under these Rules.

(2) xxxx

Provided that where such psychotropic substance is in possession of an individual for his personal medical use the

quantity thereof shall not exceed one hundred doses unit at a time.

Xxxxxx”

In view of the proviso of Rule 66 of the Rules, one dose of Corex is considered equal to 100 ml and accordingly the total quantity comes to 1300 ml, which is covered by proviso to Rule 66 of the Rules. Similarly, 15 strips of intoxicated tablets make Carisoma, each strip containing 10 tablets were alleged to be recovered from the petitioner, which contains Carisoprodol and its salt does not cover under the Act as it is covered under Schedule ‘H’ of the Drgus and Cosmetic Rules, 1945. Moreover, the petitioner is in custody since 1.10.2016 and there is no other case of NDPS Act against the petitioner. All the witnesses are official witnesses and there is no possibility that the petitioner may influence them or temper with the evidence; trial may take long time to conclude and no purpose would be served by keeping the petitioner behind the bars.

Accordingly the present petition is allowed and petitioner-Ashish Sharma is directed to be released on regular bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court.

04.09.2018
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No