

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-49219-2018 (O&M)

Date of Decision:- 11.12.2018

Vinod Kumar Jindal

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Ms. Parminder Kaur, Advocate for
Mr. S.K.Passi, Advocate, for the petitioner.

Mr. A.S.Sandhu, Addl. Advocate General, Punjab.

GURVINDER SINGH GILL, J. (Oral)

Petitioner-Vinod Kumar Jindal seeks grant of regular bail in a case registered against him vide FIR No. 116, dated 28.5.2018, registered at Police Station Kotwali, Bathinda, under Section 22 NDPS Act.

The case of the prosecution, in nutshell, is that on the day of occurrence, when a police party was proceeding towards Goniana-Bathinda Road, then one person was seen coming carrying a bundle on his head and a jhola (bag) on his right shoulder and who upon noticing the police party tried to turn towards the vacant plot on the left side. The said person was

apprehended by the police and who upon inquiry disclosed his name as Vinod Kumar Jindal. An offer in terms of Section 50 of NDPS Act was extended to him and in response thereof the said person desired to be searched in presence of some Gazetted Officer and accordingly Mr. Davinder Singh, Deputy Superintendent of Police was called at the spot. A search of the bundle carried on head by petitioner yielded recovery of 680 strips of DIGIFRESH 0.5 mg, with each strip having 60 tablets (total to 40800 tablets). Another 120 strips of DIGIFRESH 0.5 mg., each strip having 6 tablets were also recovered from him from the bundle carried on his head. A search of the bag, carried on his shoulder yielded recovery of 318 strips of TRIMA PLUS tablets (TRAMADOL) having 10 tablets each i.e. a total of 3180 tablets. 340 injections of TMDOL having 2 ML of contents in each injection were also recovered.

Learned counsel for the petitioner has submitted that he has falsely been implicated in the present case and that in fact the son of petitioner is doing finance work and some of the police officials had some grudge and had taken away the petitioner much prior to lodging of the FIR as would be evident from the CCTV footage, the photographs from which have also been annexed with the petition. The learned counsel has further submitted that in the present case the investigation has been conducted by the same very officer who had effected recovery and that the same is against the principles of fair trial. The learned counsel places reliance upon a judgment of Hon'ble the Supreme Court reported as 2018 AIR (SC) 3853 Mohan Lal Vs. State of Punjab to contend that in such circumstances, the entire recovery stands vitiated.

As regards the contention of petitioner that the matter has been investigated by the recovery officer himself, the learned State counsel submitted that the police officer who apprehended the petitioner 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."

As regards the photographs (Annexure P-2), annexed with the petition which are stated to have been extracted from CCTV footage, a perusal of the same shows that neither the petitioner nor any police officer can anywhere be seen nor the registration numbers of the vehicles shown therein are legible. At this stage, it is certainly difficult to make any observation in favour of the accused from perusal of the said photographs.

The present case is a case of recovery of contraband which falls within the category of 'Commercial Quantity'. Consequently, provisions of Section 37 of the Act would also come into play. Since, at this stage, it cannot be said that the petitioner has not committed any offence or that in case he is released on bail he would not commit any identical offence again, no case is made out for release of the petitioner on bail especially in view of the fetters imposed by Section 37 of the Act.

There is no merit in this petition and the same is hereby dismissed.

It is, however, clarified that none of the observations made above shall be taken to be an expression on merits of the main case.

December 11, 2018

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(Gurvinder Singh Gill)

Judge

Whether speaking /reasoned	Yes / No
Whether Reportable	Yes / No