

**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

CRM-M-29885-2018 (O&M)

Date of Decision:-17.1.2019

Sukhwinder Singh @ Harry

... Petitioner

Versus

State of Punjab

... Respondent

**CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL**

Present:- Mr. Jasinder Singh Thind, Advocate for the petitioner.

Ms. Ruchika Sabharwal, AAG, Punjab.

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**GURVINDER SINGH GILL, J.**

Petitioner Sukhwinder Singh @ Harry seeks grant of regular bail in a case registered vide FIR No.127 dated 11.6.2018 under Sections 22 and 25 of NDPS Act at Police Station Kotwali, District Bathinda.

The allegations in nutshell are that on 11.6.2018 when a police party headed by ASI Hargobind Singh was present near Dharam Kanda Maheshwari T-Point in the area of police station Kotwali, Bathinda for the purpose of patrolling then a clean-shaven young man was seen coming from the side of Patiala on a scooter bearing registration No.PB-03Z-7736, who upon noticing the police party became nervous and tried to turn back but was nabbed by the police. In the said process, the said person threw a black coloured poly bag from his pocket. Upon interrogation, he disclosed his name as Sukwinder Singh. A search of the bag thrown out by the aforesaid Sukhwinder Singh yielded recovery of 102 strips having 10 tablets each of CLOVIDOL-100 SR, bearing Batch No.DTET-006 having date of

manufacturing as April, 2018 and expiry date as 2020. Sukhwinder Singh could not produce any licence to justify his possession of said 1020 tablets.

The learned counsel for the petitioner has submitted that he has falsely been implicated in the present case and that since in the present case, it is the recovery officer who has investigated the case, the entire investigation stands vitiated in view of judgment of Hon'ble the Supreme Court reported as 2018 AIR (SC) 3853 Mohan Lal Vs. State of Punjab. It has further been submitted that in any case even as per the report of FSL, the Tramadol Hydrochloride was found to the extent of 97.90 mg per tablet and thus, the total weight of Tramadol Hydrochloride found in the recovered 1020 tablets would be barely 100 gms which is much lesser than the 'commercial quantity' of 250 grams. The learned counsel has, thus, prayed for release of the petitioner on regular bail.

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 the point of time when the petitioner was apprehended 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 recovery memo, 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 second contention of petitioner regarding the weight of Tramadol Hydrochloride being less than 100 grams, the learned

State Counsel has referred to note (4) inserted vide notification dated 18.11.2009 to earlier notification dated 19.10.2001 defining “commercial quantities” of various contrabands. The said note (4) reads as follows:

“(4) The quantities shown in column 5 and column 6 of the Table relating to the respective drugs shown in column 2 shall apply to the entire mixture or any solution or any one or more narcotic drugs or psychotropic substances of that particular drug in dosage form or isomers, esters, ethers and salt of these drugs, including salts of esters, ethers and isomers, wherever existence of such substance is possible and not just its pure drug content.”

The learned State counsel has thus submitted that in view of aforesaid notification dated 18.11.2009, it is not only the active ingredient of contraband which is to be taken into account but the the entire recovered quantity of contraband. In other words even the neutral content would have to be included in the weight of the contraband.

The learned State counsel has further submitted that in any case the grant of bail is governed under provisions of Section 37 of NDPS Act and that in view of the quantity recovered, it cannot be said that the petitioner is not guilty or that if released on bail he is not likely to commit the similar offence again.

I have considered rival submissions addressed before this Court. Since Notification dated 18.11.2009 still holds good and has not been struckdown so far, the entire recovered quantity has to be taken into account and which would fall within the category of “commercial quantity”.

Having considered the rival submissions addressed before this Court and bearing in mind the provisions of Section 37 of NDPS Act and the present case being a case of recovery of “commercial quantity” and that it cannot be said at this stage that the petitioner is innocent or that if released on bail he would not commit similar offence again, this Court does not find any ground for release of the petitioner on bail. The legal submissions raised on behalf of the petitioner are matter to be considered at the stage of trial in context of the entire evidence led by the prosecution and the accused and no finding as regards vitiation of investigation or trial can be returned at this stage.

The petition, as such, is without merits and is dismissed.

**17.1.2019**

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**(Gurvinder Singh Gill)**  
**Judge**

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No