

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-26427-2019

Date of Decision: 28.08.2019

Kuldeep Singh @ Sanju

.....Petitioner

Vs.

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. K.P.S. Virk, Advocate, for
Ms. Loveleen Dhaliwal, Advocate, for the petitioner.

Mr. Rajat Bansal, A.A.G., Punjab.

AMOL RATTAN SINGH, J. (ORAL)

On 24.07.2019, the following order had been passed:-

*“Learned counsel for the petitioner points to paragraph 13 of the judgment of **Union of India v. Mohan Lal**, 2016 (1) RCR (CrL.) 858, which reads as under:-*

“It is manifest from Section 52A (2)(c) (supra) that upon seizure of the contraband the same has to be forwarded either to the officer in-charge of the nearest police station or to the officer empowered under Section 53 who shall prepare an inventory as stipulated in the said provision and make an application to the Magistrate for purposes of (a) certifying the correctness of the inventory (b) certifying photographs of such drugs or substances taken before the Magistrate as true and (c) to draw representative samples in the presence of the Magistrate and certifying the correctness of the list of samples so drawn. Sub-section (3) of Section 52- A requires that the Magistrate shall as soon as may be allow the application. This

implies that no sooner the seizure is effected and the contraband forwarded to the officer in charge of the Police Station or the officer empowered, the officer concerned is in law duty bound to approach the Magistrate for the purposes mentioned above including grant of permission to draw representative samples in his presence, which samples will then be enlisted and the correctness of the list of samples so drawn certified by the Magistrate. In other words, the process of drawing of samples has to be in the presence and under the supervision of the Magistrate and the entire exercise has to be certified by him to be correct. The question of drawing of samples at the time of seizure which, more often than not, takes place in the absence of the Magistrate does not in the above scheme of things arise. This is so especially when according to Section 52-A(4) of the Act, samples drawn and certified by the Magistrate in compliance with sub-section (2) and (3) of Section 52- A above constitute primary evidence for the purpose of the trial. Suffice it to say that there is no provision in the Act that mandates taking of samples at the time of seizure. That is perhaps why none of the States claim to be taking samples at the time of seizure. Be that as it may, a conflict between the statutory provision governing taking of samples and the standing order issued by the Central Government is evident when the two are placed in juxtaposition. There is no gainsaid that such a conflict shall have to be resolved in favour of the statute on first principles of interpretation but the continuance of the statutory notification in its present form is bound to create confusion in the minds of the authorities concerned instead of helping them in the discharge of their duties. The Central Government would, therefore, do well, to

re-examine the matter and take suitable steps in the above direction.”

He further submits that the following has been eventually held by the Supreme Court:-

“....There is in our opinion no manner of doubt that the seizure of the contraband must be followed by an application for drawing of samples and certification as contemplated under the Act.”

(All emphasis applied only in this order)

Learned State counsel on the other hand has drawn attention to clauses (a) to (c) of sub-section 2 of Section 52A of the NDPS Act, 1985, to submit that either of the two procedures stipulated in the aforesaid clauses can be resorted to, and if the inventory itself is checked in terms of clause (a), clause (c) need not be resorted to.

Clauses (a) to (c) of sub-section 2 of Section 52A of the NDPS Act, 1985, read as follows:-

“52-A. Disposal of seized narcotic drugs and psychotropic substances.-

xxx

xxx

xxx

a) certifying the correctness of the inventory so prepared; or

b) taking, in the presence of such Magistrate, photographs of [such drugs, substances or conveyances] and certifying such photographs as true; or

c) allowing to draw representative samples of such drugs or substances, in the presence of such Magistrate and certifying the correctness of any list of samples so drawn.”

The judgment of the Supreme Court having held that an application for drawing of a sample and certification thereof is mandatory, I would not make any final comment as

yet on the contentions, raised by either side, but learned counsel for the petitioner, in my opinion, has made out a case by which the petitioner may be entitled to the concession of bail, if, after a perusal of the order passed by the learned Magistrate when the samples are stated to have been presented before her/him in terms of the aforesaid provision, it is seen that the samples were not drawn in her/his presence.

Learned State counsel seeks time to produce the said orders.

Adjourned to 21.08.2019.”

Pursuant to the aforesaid order, an order passed by the Additional Chief Judicial Magistrate, Sangrur, on 14.08.2018, has been produced in Court today, which reads as follows:-

“The prosecution produced before me two parcels. One alleged to be containing 147 strips of intoxicant tablets marka Calvidola-100 SR, (Tramadol HCL Sustained Release Tablets) B.No. 116-TCR MFD June.2016 EXP May 2019 totaling 1470 tablets and another parcel alleged to be containing plastic polythene having 10 gram intoxicant powder stated to be in cloth covers sealed with the seal impression 'MS/RK'. The parcels have been seen by me today in the Court being the case property, as such both parcels are handed over to the IO to deposit the same to the Forensic Science Laboratory for the purpose of analysis as per rules.

Investigating Officers also produced before me Form No. 29 in triplicate form same was handed over to him for necessary action. Photographs clicked, inventory prepared, Section 52-A sub-section (2) be complied accordingly.”

Mr. Virk, therefore reiterates what he had specifically drawn attention to from paragraph 13 of the judgment in **Mohan Lal** (supra) to submit that very obviously no sample, as is stated to have been collected by the apprehending

officer, was actually drawn by the Magistrate, who simply saw the inventory prepared by the said officers, along with the parcels produced by him and thereafter handed over the parcels to him, without drawing from the samples, stating at the end of the order that the provision, i.e. Section 52-A (2), had been complied with.

Though learned State counsel has submitted that obviously the investigating agency was not at fault as it had done its part as regards the aforesaid provision by producing the samples before the learned Magistrate, in my opinion, with the Magistrate at least seemingly not having followed the ratio of the judgment of the Supreme Court aforesaid, with no samples seen to be drawn by him, the petitioner would be entitled to the concession of bail.

Consequently, without making any final comment on the merits of the case for or against the petitioner, he is ordered to be admitted to bail to the satisfaction of the trial Court, even though learned counsel for the State submits that there is another criminal case pending against him under Section 15 of the NDPS Act, in which case he is also on bail.

The petition stands disposed of.

August 28, 2019
nitin

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
Yes