

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CRM M-42975 of 2019

Date of Decision: December 16, 2019

Gurpreet Singh @ Gopi

.....Petitioner

Vs.

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU.

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Present:- Mr. B.S. Rana, Sr. Advocate with
Mr. R.S. Bajaj, Advocate for the petitioner.
Mr.V.G.Jauhar, Sr. DAG, Punjab.

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MAHABIR SINGH SINDHU, J.

Present petition has been filed under Section 439 of the Code of Criminal Procedure, (for short 'Cr.P.C.') seeking bail pending trial in case FIR No. 74 dated 13.07.2019, under Sections 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985, (for short 'the Act') registered at Police Station Khilchian, District Amritsar Rural.

Above FIR was registered with the allegations that on 13.07.2019, ASI Surjit Singh, No.592, along with other police officials were on patrolling duty, then one clean shaven young man was seen 'coming from Village Bhindar side and he was carrying some heavy item in his right hand wrapped in a polythene. Upon seeing the police party, he abruptly turned back and tried to throw the polythene near the bushes, but was apprehended by ASI Surjit Singh with the help of fellow police personnels. On asking, the suspect disclosed his name as Mandeep Singh @ Manna son of Didar Singh, resident of Village Nijjar and stated that there are intoxicating tablets in the

polythene which he purchased from Amritsar. Since ASI Surjit Singh was not having the substantive rank of ASI, thus, could not conduct the search under the Act, therefore, he informed the Police Station, Khilchian at 05.50 PM to send some competent police officer, who can proceed with the matter. Consequently, SI Sawinder Singh was deputed and he along with police party reached at the spot and DDR No. 24 was recorded to that effect. After reaching on the spot, SI Sawinder Singh, firstly recorded the statement of ASI Surjit Singh, then checked the polythene bag of the accused and found 500 intoxicating tablets containing therein. Accused Mandeep Singh could not produce any license or permit regarding the contraband and thus, the same was taken into police possession after recording the requisite proceedings. During interrogation, said Mandeep Singh @ Manna disclosed that intoxicant tablets were purchased by him from Deep Medical Agency, Katra Sher Singh, Amritsar. After completion of the police proceedings at about 7.30 PM and recording of disclosure made by the accused, SI Sawinder Singh sent a ruqa to the police station for registration of an FIR and on the basis thereof, the above FIR was registered. Thereafter, SI Sawinder Singh informed DSP as well as Amritpal Singh, Drug Inspector, for conducting the raid at the shop of the petitioner from where the accused Mandeep Singh had purchased the contraband. Consequently, on the identification of accused Mandeep Singh, search of Medical Store of the petitioner was conducted by SI Sawinder Singh, in the presence of DSP Gurwinder Singh as well as

Amritpal Singh, Drug Inspector. One box of medicines along with empty cartons were found lying outside the Medical Store of the petitioner and upon inquiry, he disclosed that boxes belong to him. On checking, 29 small boxes containing 14,500 intoxicant tablets (Tramadol) were recovered from the shop of the petitioner, but he failed to produce any valid authorization or licence under the Act. Contraband was converted into the parcel and taken into police possession by the Investigating Officer.

Learned Senior counsel contends that petitioner has been falsely implicated in this case inasmuch as the entire prosecution story is self-contradictory and suffering from various infirmities which make the entire exercise of recovery, as a bundle of lies. Further contends that as a matter of fact, petitioner is having a valid wholesale licence issued by the competent authority under Rule 63 A of the Drugs and Cosmetics Rules, 1945, for short '1945 Rules' in the name of the firm, i.e. M/s Deep Medical Agencies, Amar Dass Market, Amritsar and thus, he cannot be prosecuted under the provisions of the Act. Again contended that Seizing Officer, exceeded his jurisdiction while conducting the raid at the premises of the petitioner, which concededly situated within the area of a different police station, thus, the entire recovery proceedings are vitiated.

On the other hand, learned State counsel submitted that recovery of 14500 tablets of '*Tramadol*' have been effected from the petitioner in the presence of a Gazetted Officer as well as Drug Inspector and the same has been declared as '*psychotropic*

substance’ in view of the notification dated 26.04.2018 issued by the Government of India and petitioner has failed to produce any licence or authorization for sale and purchase of the contraband in terms of the Act or Narcotic Drugs and Psychotropic Substances Rules, 1985, for short ‘1985 Rules’, or the State Rules, namely, The Punjab Narcotic Drugs and Psychotropic Substances Rules, 2012. Further submitted that minor typing errors regarding the timings in the affidavit dated 17.10.2019 of the then DSP have been duly explained in the subsequent affidavits of the Inspector/SHO, Police Station, Khilchian as well as of present DSP, Sub Division, Baba Bakala Sahib, dated 04.12.2019 and 09.12.2019, respectively. Also submitted that Investigating Officer had duly intimated the DSP as well as Drug Inspector before search and making the recovery of the contraband from the petitioner, thus, he does not deserve the concession of bail.

Heard both sides and perused the paper book.

So far as the argument regarding discrepancies of timings raised by learned Senior Counsel in the prosecution case is concerned, this Court, on 15.11.2019, while granting interim bail to the petitioner passed the following order:-

“In compliance of the order dated 17.10.2019 passed by this Court learned State counsel has filed affidavit of Gurwinder Singh, PPS, DSP, Sub-Division Baba Bakala Sahib, District Amritsar Rural (now posted as DSP Indoor, Punjab Police Academy, Phillaur) in the

Court today. The same is taken on record. Copy supplied to the opposite side.

Perusal of the affidavit reveals that on 13.07.2019 at 5.50 PM, co-accused Mandeep Singh was apprehended by police party headed by ASI Surjit Singh, No.592/Asr. in the area of Bridge Bhinder, Police Station Khilchian and he was found in possession of intoxicant tablets wrapped in one poly bag. Since ASI Surjit Singh was not the regular ASI rather conferred only a local rank, thus he requested to the Police Station for sending the investigating officer. Consequently, SI Savinder Singh along with another ASI Surjit Singh, No.1008 and HC Avtar Singh reached on the spot and recovered 500 intoxicant tablets from above said Mandeep Singh and a ruqa in this regard was sent at 7.30 PM by him to Police Station, Khilchian for registration of an FIR and on the basis of which a formal FIR No.74 was registered at 8.40 PM on 13.07.2019. During interrogation of above said Mandeep Singh, he disclosed about the purchase of the contraband from present petitioner who is the proprietor of M/s Deep Medical Agency, Guru Amar Dass Market, Katra Sher Singh, Police Station, Kotwali, E-Division, Amritsar, and his disclosure statement was also recorded to that effect. Affidavit further reveals that a raid was conducted at the shop of the petitioner by SI Savinder Singh along with other police officials at about 9.30 PM and recovered 29 boxes containing 14,500 intoxicating tablets of Tramadol. Also mentioned in para 8 of the affidavit that during raid, health condition of co-accused namely, Mandeep Singh @ Manna deteriorated therefore, he was taken to Civil Hospital, Amritsar and later on he was referred and admitted in Guru Nanak Dev Hospital,

Amritsar, and a DDR No.31 dated 13.07.2019 at 11.20 PM in this regard was entered.

During the course of hearing, learned Senior counsel on behalf of the petitioner has drawn the attention of this Court towards the vernacular of the FIR in question wherein it is recorded that ruqa was sent by SI Savinder Singh at 5.30 PM, thus he claims that averment made in para 4 of the affidavit regarding sending the ruqa at 7.30 PM is factually incorrect being contrary to record and a false and fabricated case has been foisted upon the petitioner. Learned Senior counsel has further pointed out that as per the record of Civil Hospital, Amritsar, coaccused Mandeep Singh was admitted at 8.06 PM, thus the assertion in para 6 of the affidavit that raid was conducted at the premises of the petitioner at 9.30 PM and co-accused Mandeep Singh @ Manna was admitted in Hospital during raid, again falsifies the prosecution case.

After taking into consideration the submissions made by learned Senior counsel, prima facie there appears to be material contradictions in the prosecution case, therefore, let an affidavit be filed by SHO, Police Station, Khilchian, while disclosing the entire sequence of events in this case right from the initial information supplied by ASI Surjit Singh, No.592/Asr. at 5.20 PM on 13.07.2019 uptill the deposit of contraband by SI Savinder Singh.

Adjourned to 04.12.2019.

SI/ Investigating Officer Savinder Singh be present in Court along with original record on the next date of hearing.

Keeping in view the glaring infirmities noticed above, petitioner be released on interim bail till the next

date of hearing on his furnishing adequate bail and surety bonds to the satisfaction of learned trial Court/Duty Magistrate.”

In compliance of the above order, Inspector/ SHO, PS, Khilchian, filed his affidavit dated 04.12.2019 and he has given the complete sequence of events which led to the recovery of contraband from the petitioner, in the following manner:-

- i) **5.20 PM dated 13.07.2019:** ASI Surjit Singh, No.592 along with police party proceeded for patrolling vide DDR No.23 and apprehended co-accused Mandeep Singh @ Manna from the area of Village Bhinder along with intoxicant tablets;
- ii) **5.50 PM:** Since ASI Surjit Singh was not holding the substantive rank, therefore, SI Sawinder Singh along with other police officials were deputed vide DDR No.24 and they reached on the spot at 06.05 PM;
- iii) **07.30 PM:** After recording the proceedings for recovery of contraband from co-accused Mandeep Singh @ Manna, a ruqa was sent by SI Sawinder Singh to PS, Khilchian for registration of an FIR through Constable Harpal Singh;
- iv) **07.35 PM:** DSP Gurwinder Singh, Sub Division, Baba Bakala as well as Amritpal Singh, Drug Inspector were informed by SI Sawinder Singh about the raid to be conducted on the basis of disclosure made by co-accused Mandeep Singh @ Manna;

- v) **8.20 PM:** Raiding party reached on the shop of the petitioner leading to the recovery of 14500 tablets of '*Tramadol*';
- vi) **08.40 PM:** Present FIR was recorded at Police Station Khilchian by ASI Shamsheer Singh;
- vii) **08.50 PM:** Condition of co-accused Mandeep Singh @ Manna deteriorated consequently, he was taken to Civil Hospital, Amritsar for treatment;
- viii) **09.20 PM:** FIR was sent to SI Sawinder Singh on the spot through Constable Harpal Singh;
- ix) **10.20 PM:** SI Sawinder Singh, proceeded towards Guru Nanak Dev Hospital, Amritsar, along with petitioner and case property;
- x) **10.40:** SI Sawinder Singh reached at Guru Nanak Dev Hospital, Amritsar and after inquiring the condition of co-accused, Mandeep Singh @ Manna, deployed HC Sarabjit Singh as well as C.Harpal Singh on guard duty;
- xi) **11.20 PM:** SI Sawinder Singh after reaching at Police Station, Khilchian, handed over the petitioner as well as case property to SHO and duly recorded his arrival in the Register.

Similar stand has been taken by the present DSP in his affidavit dated 09.12.2019 and there is no counter response on behalf of the petitioner.

After perusal of both the affidavits as well as police file, this Court is satisfied that the discrepancies noticed in the order dated 15.11.2019 were on account of typing errors and the same have been duly explained by the prosecution and the petitioner cannot take any benefit of the same for the purposes of consideration of this bail application. There is no need to go further in this factual aspect of the matter, lest it may prejudice the case of the parties. Therefore, first contention raised on behalf of the petitioner is without any substance.

So far as plea of licence granted to the petitioner under Rule 63-A of the 1945 Rules is concerned, the same is also not helpful for the simple reason that as per the allegations of the prosecution, recovery of 14500 tablets of "*Tramadol*" is stated to have been effected from his shop. There is no dispute that Ministry of Finance, Department of Revenue, Government of India, while exercising powers under Section 3 of the Act, vide Gazette notification No.S.O.1761(E) dated 26.04.2018, has included the "*Tramadol*" in the list of psychotropic substances at Sr. No.110Y of the Schedule attached with the Act.

Section 8 of the Act inter-alia mandates that 'no person shall possess, sell, purchase any psychotropic substance, except for medical or scientific purposes and in the manner and to the extent provided by the provisions of this Act or the rules or orders made thereunder and in a case where any such provision, imposes any requirement by way of licence, permit or authorization also in

accordance with the terms and conditions of such licence, permit or authorization.'

Still further, Rule 66 of 1985 Rules stipulates that 'no person shall possess any '*psychotropic substance*' for any of the purposes covered under 1945 Rules, unless he is lawfully authorized to possess such substance for any of the said purposes under these Rules'.

Thus, a conjoint reading of Section 8 of the Act as well as Rule 66 of 1985 Rules, apparently make the position clear that no person shall possess any "*psychotropic substance*" until and unless he is lawfully authorized for the possession of the same under 1985 Rules. Since the petitioner has failed to produce or show any lawful authorization in terms of 1985 Rules, for the possession of '*psychotropic substance*' recovered from him, therefore, in view of the prohibition contained under Section 8, mere existence of the licence in his favour under Rule 63-A of 1945 Rules, would not absolve him from the liability under Section 22 of the Act. Also to be noticed that in view of Section 80 of the Act, the provisions of Section 8 as well as Rule 66 of the 1985 Rules are in addition to Drugs and Cosmetics Act, 1940 as well as Rules of 1945. Thus, in the opinion of this Court, there is nothing wrong for prosecuting the petitioner for unlawful possession of the '*psychotropic substance*' under the Act.

So far as the third point regarding jurisdiction is concerned that is also not helpful to the petitioner. The recovery effected from the petitioner is a big haul of "*psychotropic substance*"

and as per the allegations of the prosecution in the FIR as well as consistent stand taken in all three affidavits, the raid was conducted at the shop of the petitioner on the basis of disclosure and identification made by co-accused Mandeep Singh @ Manna. Since in the present case, as stated by learned State counsel on instructions from the police official present in Court, that an information was given to the concerned Police Station by SI Sawinder Singh regarding search of the shop of the petitioner, as such the course adopted by the Investigating Officer is legally permissible in view of provisions of Section 166 Cr.P.C. Moreover, at best, this is a plea of defence, which could be raised by the petitioner during trial, if so advised, and the same shall be considered by the Special Court, in accordance with law. There is sufficient material which indicates that prior to the search, Investigating Officer had very well informed the DSP as well as the Drug Inspector for sanctity of the recovery process and which has been duly effected in the presence of a Gazette Officer. Therefore, the plea of jurisdiction would not be helpful to the petitioner, at this juncture, in view of the embargo contained under Section 37 (1) (b) (ii) of the Act.

In view of the facts and circumstances discussed hereinabove, this Court is left with no option except to dismiss the present petition.

Ordered accordingly.

It is clarified that interim bail granted to the petitioner vide order dated 15.11.2019, comes to an end with the passing of this

order. Hence, the petitioner will surrender before the learned trial Court/ Illaqa Magistrate, forthwith. In case of failure to do so, the prosecution would be at liberty to take all possible legal steps to apprehend the petitioner and to take him in custody.

Necessary compliance report, regarding surrender/ arrest of the petitioner be submitted to the Registry of this Court, within a period of two weeks from today.

The above observations may not be construed as an expression of opinion on the merits of the case.

December 16, 2019
sanjay

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/ reasoned:	Yes/ No.
Whether Reportable:	Yes/No.