

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-45764-2019

Date of Decision:10.12.2019

Rohit Sumbria @ Ishu

....Petitioner

Versus

State of Punjab

....Respondent

CORAM:HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. N.S. Sodhi, Advocate for the petitioner.

Mr. Harpreet Singh Multani, AAG, Punjab.

MAHABIR SINGH SINDHU, J.(Oral)

Present petition has been filed under Section 439 of the Code of Criminal Procedure seeking bail pending trial in case FIR No.37 dated 28.04.2018 under Sections 21/22/61 and 85 of the Narcotic Drugs and Psychotropic Substances Act, 1985, (for short 'the Act'), registered at Police Station Sujanpur, District Pathankot.

The above FIR was registered with the allegations that police party received a secret information regarding the selling of Heroine by the petitioner as well as his co-accused, namely, Dharampal @ Roda. Consequently, a raid was conducted, where both the accused were apprehended from the vehicle make Scorpio bearing Registration No. PB-02-AZ-9264 at the disclosed place, near Village Gugran. Thereafter, Inspector Bharat Bhushan gave a joint offer to both the accused and recovery of 05 grams Heroine was effected from the right pocket of the trouser of the petitioner. Similar recovery of 05 grams Heroine was effected from the right pocket of trouser of co-accused. In addition to above, 80 grams Heroine as well as 1000 intoxicant tablets (Alprazolam) were recovered from the dash-board of the Car.

It is contented that the petitioner is in custody since 06.09.2019 and on earlier occasion he was granted the concession of interim bail by this Court, but he never misused the same. Further contends that the report under Section 173 Cr.P.C. has also been presented on 30.11.2018 and charges are yet to be framed in this case. Also contends that as per the allegations of the prosecution, only 05 grams of Heroine was recovered from the petitioner and so far as recovery from dash-board is concerned, the same cannot be attributed him, as he was neither the owner; nor the driver of the Scorpio Vehicle. Also contended that at the time of conducting the personal search, a joint offer was given to both the accused, thus, there was a breach of Section 50 of the Act.

On the other hand, learned State counsel although acknowledged the factual position regarding the submission of report under Section 173 Cr.P.C., joint offer to both the accused at the time of search as well as interim bail granted to the petitioner on earlier occasion, but he tried to justify the conscious possession of the petitioner regarding the recovery from the dash board of the Car also.

Heard learned counsel for the parties and perused the paper book.

Undisputedly, on earlier occasion, the petitioner was granted the interim bail by this Court till the receipt of FSL report, but he never misused the same and after submission of the challan, he is in custody since 06.09.2019. Although, as per allegations of the prosecution, recovery of 05 grams of Heroine was effected from the personal search of the petitioner, but the liability regarding 80 grams Heroine as well as 1000 Alprazolam Tablets recovered from the dash-board of the Car, cannot be fastened upon him, at this stage as concededly, he is neither the owner;

nor the Driver of the Scorpio Vehicle in question and it would be a debatable question during trial. Still further, the joint offer given to both the accused is not disputed by learned State counsel and thus, that is also prima facie contrary to the mandatory provisions of Section 50 of the Act.

In view of the above, this Court is of the opinion that as recovery from the petitioner is less than commercial quantity and search being in violation of Section 50 of the Act, therefore, without expressing any opinion on merits of the case, it would be appropriate to release him on bail pending trial.

Petition is allowed. Petitioner-Rohti Sumbria @ Ishu be admitted to bail on his furnishing bail bonds and surety bonds to the satisfaction of the learned trial Court concerned.

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

[MAHABIR SINGH SINDHU]
JUDGE

December 10, 2019
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Whether speaking/reasoned	yes/no
Whether reportable?	yes/no