

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

**Crl. Misc.No.M-16497 of 2020**

**Date of Decision:- 23.09.2020**

Kashmir Singh alias Sheera

....Petitioner

vs.

State of Punjab

....Respondent

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**BEFORE :- HON'BLE MR. JUSTICE SUDHIR MITTAL**

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Present:- Mr. Ashish Aggarwal, Advocate,  
for the petitioner.

Mr. H.S. Sitta, AAG, Punjab.

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**Sudhir Mittal, J.**

This petition has been filed for grant of regular bail.

A police party was on patrolling duty on 30.08.2019 and when it reached near Village Malian, it spotted a silver coloured Alto car approaching with two persons sitting inside. On spotting the police party, they tried to reverse the car at high speed and the car skidded and got stuck in the paddy fields on the roadside. The persons sitting inside the car were apprehended and search was conducted in the presence of a Gazetted Officer. Four polythene bags were allegedly lying on the thighs of the driver Jasbir Singh alias Gora and one polythene bag was lying on the thighs of the petitioner, namely, Kashmir Singh alias Sheera. From the polythene bags lying on the thighs of Jasbir Singh alias Gora, a total of 450 strips of

Clovidol-100SR were recovered, each strip containing 10 tablets. Thus, the total recovery effected was 4500 tablets of Clovidol-100 SR. From the polythene bag recovered from the petitioner, a total of 700 strips of Clovidol-100SR were recovered, each strip containing 10 tablets. Thus, the total came to 7000 tablets. A sum of ₹ 80,000/- in currency notes of ₹ 500/- was also recovered from the petitioner whereas a sum of ₹ 2,35,000/- in currency notes of ₹ 500 was recovered from co-accused Jasbir Singh alias Gora. The FIR further records that the 4500 tablets recovered from Jasbir Singh alias Gora were placed in a plastic box and sealed. Similarly, the 7000 tablets recovered from the petitioner were placed in a separate plastic box and sealed. The recovery led to registration of FIR No.225 dated 30.08.2020 registered at PS City Tarn Taran, under Sections 22, 29, 27-A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the NDPS Act').

Vide order dated 13.11.2019, the petitioner was released on interim bail as the report of the Forensic Science Laboratory had not yet been received. Challan was presented on 02.03.2020 and the petitioner was taken into custody. Since then, the petitioner has been behind bars.

Learned counsel for the petitioner has raised two arguments. Firstly, the entire contraband has not been sent for chemical examination. Only one strip containing 10 tablets was sent for chemical examination and this does not amount to sending a representative sample as required by law. Accordingly, according to the learned counsel, it cannot be said that commercial quantity of a narcotic/psychotropic substance was recovered from the petitioner. The second argument is that the mandate of Section 50 of the NDPS Act has been violated as search was not conducted in the

presence of a Gazetted Officer. Reliance has been placed on order dated 07.01.2020 passed in Saurabh Sabharwal vs. State of Punjab, CRM-M No.54384 of 2019 and order dated 22.09.2017 passed in Surinder Kaushal vs. State of Punjab CRM-M No.30455 of 2017. A Division Bench judgement of this Court in State of Punjab vs. Dharam Singh, 2010 (3) RCR (Criminal) 94 has also been relied upon.

A custody certificate dated 16.09.2020 has been presented in Court. The same is taken on record. According to this certificate, the petitioner has undergone actual custody of 8 months and 25 days and there is no other criminal case pending against him.

Learned State counsel has argued that the entire contraband was not required to be sent for chemical examination for the reason that all the strips belonged to the same batch. Under the circumstances, sending one strip constituted a representative sample and no illegality has been committed. Regarding Section 50 of the NDPS Act, it is argued that recovery was not effected from the personal search of the accused. The recovery was effected from polythene bags lying in their laps. Thus, there can be no violation of the said provision of law.

Learned State counsel has supplied a copy of order dated 31.08.2019 passed by the Chief Judicial Magistrate, Tarn Taran, as well as a copy of report dated 25.11.2019 prepared by the Regional Testing Forensic Science Laboratory, Punjab, Amritsar, in support of his arguments. A perusal of order dated 31.08.2019 shows that the case property was produced before the Chief Judicial Magistrate on the said date. The same was contained in two plastic boxes marked as 'Box A' and 'Box B'. Box A contained 450 strips recovered from the co-accused whereas Box-B

contained 700 strips recovered from the petitioner. The batch number of the strips contained in each of the boxes is also mentioned in the said order. One strip each from each of the boxes was taken as a representative sample and sent to the Forensic Science Laboratory for examination, after they were sealed with the seal of the Court. The report dated 25.11.2019 of the Forensic Science Laboratory reveals that the parcels were received with seals intact and on examination of the contents, each tablet was found to contain 94.20 Mg. of Tramadol Hydrochloride.

From the aforementioned order passed by the Chief Judicial Magistrate, Tarn Taran, it is evident that the contraband recovered from the petitioner was produced in a sealed parcel labelled as 'Box B'. The seal was opened in the presence of the Court and the box was found to contain 700 strips of Clovidol-100 SR each containing 10 tablets. All the strips were found to belong to the same batch and the batch number is recorded. One strip with the same batch number was drawn as a representative sample and sent to the Forensic Science Laboratory, after sealing it with the seal of the Court. The report of the Forensic Science Laboratory shows that the sample was received by it in a sealed condition. Thus, the argument of learned counsel for the petitioner that the sample sent for chemical examination was not a representative sample, is misconceived. The judgements relied upon by the learned counsel in *Saurabh Sabharwal (supra)*, *Surinder Kaushal (supra)* and *Dharam Singh (supra)* are not applicable. In *Saurabh Sabharwal (supra)*, the recovered contraband did not contain a batch number. The case of *Surinder Kaushal (supra)* is regarding recovery of contraband contained in bottles and that is also a case of no batch number. The judgement in *Dharam Singh (supra)* is also not applicable for the

simple reason that the recovery therein was of loose tablets as opposed to tablets contained in strips each strip possessing the same batch number, in the present case.

A perusal of the FIR shows that search was conducted in the presence of a Gazetted Officer. Thus, it is factually incorrect to argue that Section 50 of the NDPS Act has been violated. The argument deserves outright rejection.

In view of the aforementioned reasons, I do not find any merit in this petition. The same is accordingly dismissed.

**September 23, 2020**  
**poonam**

**( SUDHIR MITTAL)**  
**JUDGE**

**Whether Speaking/Reasoned**                      **Yes**

**Whether Reportable**                              **Yes**