

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

**CRM-M No.19330 of 2020
Date of Decision:-10/11/2020**

Nazam Singh

...Petitioner

Versus

State of Haryana

...Respondent

CORAM:- HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. D.N. Ganeriwala, Advocate
for the petitioner.

Mr. Naveen K. Sheoran, DAG, Haryana.

Through Video Conferencing

JASGURPREET SINGH PURI J.

The present petition under Section 439 Cr.P.C. has been filed for grant of regular bail to the petitioner pending trial in case FIR No.96 dated 08.09.2019, under Section 22 of NDPS Act, registered at Police Station Odhan, District Sirsa. The earlier bail application bearing Criminal Misc. No. M-47351 of 2019 was dismissed by this Court on 04.3.2020 on merits by passing a detailed order.

As per the FIR, the police received an information, on the basis of a secret information that the petitioner is doing the business of selling intoxicant tablets in his own maruti swift car (white) bearing registration No.HR-25-B-9597 and was just about to leave his house, which is situated

at Johar alongwith intoxicant tablets in the car and shall go for selling the same. Thereafter, notice under Section 42 of NDPS Act was prepared separately and sent the information to Supervising Officer Shri Nar Singh, Deputy Superintendent of Police, Kalanwali through Head Constable Ramesh Kumar and reached the bus stand of village Mithri in a government vehicle where after inquiry, they went to the house of petitioner and when they just reached in front of house of the petitioner, then they found one maruti swift car (white) bearing registration No. HR-25-B-9597 was just moved out from the gate of the house of petitioner and when the same was stopped by the police vehicle from the front side, then from the help of fellow associates, they encircled the car from all sides and overpowered the driver of the swift car and asked his name and address. On asking, the driver of the swift car disclosed his name as Nazam Singh (petitioner). Thereafter, on suspicion of having some intoxicant substance in the aforesaid car, notice under Section 50 of NDPS Act was issued to the petitioner to the effect that there is suspicion that some intoxicant substance in his possession and the petitioner and his car are required to be searched and that he is a right to be searched before any Gazetted Officer or Magistrate. The petitioner after going through the contents of the notice stated that he wishes to call any Gazetted Officer or a Magistrate for his search as well as search of his vehicle. Thereafter, Shri Nar Singh, Deputy Superintendent of Police, Kalanwali was contacted on his mobile number with the request to reach at the spot, who reached at the spot and thereafter the search proceedings were started. On search, one black colour polythene bag was lying at the conductor seat of the car and two black polythene bags

were lying at the rear seat of the car. The black colour polythene bag lying at the conductor seat was opened and checked. On checking, total 21 containers were recovered from the polythene bag and two polythene bags, black coloured, lying in the rear seat of the car were also opened and checked. On checking, 22 containers each from both the bags were found containing intoxicant tablets (tramadol). Total 65 containers duly recovered, were checked one by one and then NRx Tramadol Hydrochloride tablets 100 mg, Clovidol 100 SR tablets (10x5x10 tablets), Batch No.TVD-19220, MFG date August/2019, Expiry Date July/2022 was written on all 65 containers. A total 50 strips were lying in each container and each strip containing 10 tablets and each box containing 500 tablets. In this way, in 65 containers duly recovered, there were total 32,500 tablets and that the aforesaid tablets were duly recovered which, fall under the provisions of NDPS Act. Thereafter, further process was carried on.

Learned counsel for the petitioner has submitted that the petitioner was innocent and falsely implicated in the present case. He has submitted that when the earlier petition for regular bail was filed in this Court, the Senior Superintendent of Police, Sirsa filed a false affidavit by stating that he has carefully perused the video DVD produced by Seema Kaur wife of the petitioner and that in the said video clip the petitioner/accused Nazam Singh has been shown changing the clothes. Learned counsel for the petitioner has submitted that on the basis of the video which was prepared by the family members, it shows that the petitioner was arrested from his house at 05:10 PM on 08.09.2019, whereas in the FIR, at serial No.3 the time of occurrence has been shown to be 0023

hours. Learned counsel for the petitioner has raised the following pleas :-

- (I) The video clip showing the petitioner and the police was during the day time at 05:10 PM whereas the time of occurrence in the FIR has been shown to be 11:00 PM at night and therefore, the Senior Superintendent of Police, Sirsa had filed a false affidavit.
- (II) The affidavit of the Senior Superintendent of Police, Sirsa did not state that there was presence of a lady constable in uniform, who could be clearly seen sitting in the house of the petitioner.
- (III) The police has falsely implicated the petitioner in view of the factual contradiction between the actual time of occurrence to be in the late evening at 11:00 pm as appearing in the FIR.

Learned counsel for the petitioner has submitted that the petitioner is in custody since the date of his arrest i.e. 08.09.2019 and the fact that the petitioner has been falsely implicated in the present case, he may be considered for grant of regular bail.

On the other hand, Shri Naveen K. Sheoran, learned DAG, Haryana has submitted that firstly, the present petition is not maintainable in view of the fact that earlier petition filed by the petitioner for regular bail was dismissed by this Court on merits on 04.3.2020 and there are no fresh grounds or change of circumstances, which would entitle the petitioner to file a successive bail petition. He has further submitted that the contention raised by learned counsel for the petitioner tht the earlier bail petition was

dismissed on the basis of false affidavit by the SSP, Sirsa is also without any substance. He has submitted that the SSP, Sirsa did not file a false affidavit and it was a correct affidavit and the position has been further explained by filing a fresh affidavit by way of clarification by the Superintendent of Police, Sirsa dated 05.10.2020. Learned State counsel has submitted that the contention raised by learned counsel for the petitioner that the petitioner was arrested during the day time at late evening but the time of occurrence which has been shown in the FIR to be 0023 hours is only a minor discrepancy/typographical error in the FIR and such minor discrepancy cannot be a ground to conclude that the police has acted in a malafide manner or that the police has falsely implicated the petitioner. The learned State counsel has further submitted that considering the totality of facts and circumstances of the case, it is clear that the huge contraband was recovered from the petitioner comprising 32,500 tablets of tramadol and therefore the very fact that the time of occurrence shown in the FIR by way of a mistake of the recording officer cannot become a ground for grant of bail to the petitioner. He has further submitted that the quantity of contraband recovered from the petitioner was commercial as per the provisions of the NDPS Act and therefore there is a bar under Section 37 of the NDPS Act for the grant of bail. Learned State counsel has further submitted that there is no reasonable ground to show or believe that the petitioner is not guilty for such offence or that he is not likely to commit any offence while on bail and therefore the exception created under Section 37 of the NDPS Act is not attracted in the present case. He has further referred to para 2 of the preliminary submissions of the reply filed by the

DSP that another case bearing FIR No.283 dated 26.9.2019 under Section 22(c) of the NDPS Act was registered at Police Station Dabawali in which 300 intoxicant tablets were recovered from one Rajkumar, who had disclosed that these tablets were purchased by him from the present petitioner, namely, Nazam Singh prior to his arrest in the present case and so in the aforesaid case the present petitioner is an accused and had been joined in the investigation in that case also on 04.12.2019. The learned counsel prayed for dismissal of the present bail application.

I have heard learned counsel for the parties.

The primary argument, which has been advanced by learned counsel for the petitioner is that at the time of the arrest of the petitioner, a DVD was prepared by the family members of the petitioner, which clearly shows that it was day time whereas in the FIR, the time of occurrence has been mentioned as 0023 hours and therefore there is inconsistency between the same. Learned counsel for the petitioner has submitted that the SSP, Sirsa had filed a false affidavit in the earlier bail petition by saying that he had seen the video, which shows changing of the clothes by the petitioner. Furthermore, it is a case of the petitioner that the SSP, Sirsa did not mention the presence of the lady constable in uniform in the affidavit and therefore, his affidavit can be construed as a false affidavit.

In the earlier Criminal Misc. No. M-47351 of 2019 the relevant part of the affidavit of the SSP, Sirsa is reproduced as under :-

“5. That one DVD has also been produced by Seema Kaur wife of the petitioner on 05.12.2019 which has been carefully perused by the deponent. The

duration of the video clip contained therein is about 18 seconds in which petitioner/accused Nazam Singh has been shown changing the clothes. In this regard it is submitted that the recovery officer has told that when the accused was apprehended in the car in front of his house he was wearing the dirty clothes and on the request of the petitioner/accused and his wife, he was allowed to change the clothes by the Deputy Superintendent of Police, Kalanwali in whose presence the recovery was affected. For the purpose of changing the clothes, the petitioner was allowed to enter into his house. At that time HC Rajender Singh and HC Ramesh Kumar had also gone with him. The video clip shows that accused Nazam Singh was changing the clothes in the presence of these two officials and his wife Seema Kaur.

6. That the report regarding the analysis of the contraband has been received from the Forensic Science Laboratory which report also supports the case of prosecution. The investigation is almost complete and the challan is likely to be presented before the learned Court at the earliest.
7. That Nazam Singh (petitioner/accused), besides the two above mentioned cases under the NDPS Act was also involved in another case bearing FIR No.179 dated 01.06.2014 under Section Arms Act, P.S. City Dabwali. In this case he was acquitted on 10.07.2015.
8. That the petitioner is involved in the present case of commercial quantity of the contraband. He does not deserve for the concession of interim or

regular bail.”

This Court while deciding the aforesaid first bail application by the petitioner, dismissed the bail application on the basis of the arguments advanced by learned counsel for the parties as well as the affidavit filed by the SSP. It is a settled law that successive bail application can be filed when there is a change of circumstance or when there is a new ground available or where there are other extraordinary circumstances due to which successive bail application can always be considered in accordance with law. Therefore, the present case has to be dealt with as to whether any such circumstance is available so as to entitle the petitioner to file successive bail application. Apart from this, the bar contained under Section 37 of the NDPS Act is also required to be considered.

The contention raised by learned counsel for the petitioner that earlier the SSP, Sirsa had filed a false affidavit needs to be considered first. The SSP, Sirsa had stated that the DVD, which was produced by Seema Kaur wife of the petitioner that it was carefully perused by him and the duration of the video clip was 18 seconds in which the petitioner was shown changing the clothes and the recovery officer had told that when the accused was apprehended in car in front of his house he was wearing the dirty clothes and on the request of petitioner/accused and his wife he was allowed to change the clothes by the Deputy Superintendent of Police, Kalanwali, in whose presence the recovery was effected and for the purpose of changing the clothes, the petitioner was allowed to enter his house and at that time Head Constable Rajender Singh and Head Constable Ramesh Kumar had also gone with him and the video clip shows that the accused

Nazam Singh was changing the clothes in the presence of these two officials and his wife Seema Kaur. In the present petition, the Deputy Superintendent of Police filed an affidavit by stating in para 3 of the reply on merits that the petitioner was apprehended in the late evening and notice under Section 50 of the NDPS Act was served upon him. Much time was consumed in the process of writing and service of notice under Section 50 of the NDPS Act and receiving the reply thereof from the accused. Thereafter, the Gazetted Officer (deponent) was called at the spot by making call on cell phone and some time was also consumed by the Gazetted Officer in reaching at the spot alongwith his staff and thereafter search of the car of the petitioner/accused was conducted and much time was consumed in counting and sealing the recovered 32,500 intoxicant tablets and after completion of seizure and sealing proceedings, the property seizure memo (recovery memo) was prepared at 10:00 PM. It is further submitted in the affidavit that it is wrong to say that the occurrence took place between 11:00 PM to 11.25 PM as the petitioner was apprehended in the late evening, however, much time was consumed in the abovesaid proceedings, so the evening had turned into night hours. The recovery memo was prepared at 10:00 PM as per Annexure R-1. It is further stated in the affidavit that no prejudice has been caused to the petitioner if some of the police officials were in civil dress and that the petitioner has also mentioned nothing as to how he was prejudiced with the presence of lady constable in uniform.

Thereafter, the Superintendent of Police, Sirsa also filed an additional affidavit. It was categorically stated in the affidavit that the

petitioner was apprehended afternoon in the evening before the sunset and much time was consumed thereafter for the entire process and the recovery memo was prepared at 10:00 PM and thereafter ruqa was sent at 10:25 PM to the police station for registration of the FIR. It is further stated in the affidavit that in the affidavit filed on behalf of State of Haryana in the earlier petition the factum of day time at the time of changing the clothes by the petitioner was never denied and that there was no self-contradictory version in the affidavits filed in the present petition and in the earlier petition. The short additional affidavit, which was filed by the Superintendent of Police, Sirsa is reproduced as under :-

- “1. That this additional affidavit is in continuation of earlier reply by way of affidavit dated 08.09.2020.
2. That the petitioner was apprehended after noon in the evening but before the sun set. Notice under Section 50 NDPS Act was served upon the petitioner/accused and as desired by the petitioner/accused the Gazetted Officer, the then Deputy Superintendent of Police, Kalanwali was called upon the spot. After arrival of the Gazetted Officer, the petitioner and his wife made a request to allow the petitioner to change the cloths as the cloths worn at that time by the petitioner/accused was dirty. On humanitarian ground the Gazetted Officer consented for the same. So, the petitioner was taken by the police personnel inside his house where he changed his cloths.
3. That huge recovery of 65 boxes of intoxicant tablets totally i.e. 32,500 tablets was effected from the petitioner. Much time was consumed in counting of the strips of tablets and checking the batch number, date of manufacturing and date of expiry etc. Much time was

also consumed in the process of conversion of the recovered contraband into the sealed parcels. Ultimately after completion of procedure, the recovery memo was prepared at the spot and by that time it was already 10:00 PM. Thereafter ruqa was sent at about 10:25 PM to the police station for registration of FIR.

4. That in the affidavits filed on behalf of the State of Haryana in the present petition as well as earlier petition CRM-M-47351 of 2019 (O & M), the factum of day time, at the time of changing the cloth by the petitioner has never been denied.
5. That under the facts mentioned above there is no self contradictory version in the affidavits filed in the present petition and in the earlier petition. There is no force in the plea/arguments advanced by the learned counsel for the petitioner that false affidavit has been filed. From the facts mentioned above it is established that the petitioner/accused alongwith his car was apprehended in the evening hours and it was day light when he was allowed to change his cloths, however, the night had fallen during the course of recovery proceedings.”

From the perusal of the aforesaid affidavits, which are filed by the DSP and the S.P., Sirsa in the present petition, the State has taken a categorical stand and even clarified the factual position by stating that the petitioner was arrested in afternoon in the evening but before the sunset and thereafter the requisite process was complied and ultimately the recovery memo was prepared at 10:00 PM vide Annexure R-1 and the FIR was registered. A perusal of the earlier affidavit filed by the SSP, Sirsa would show that the SSP did not state in the affidavit anywhere that the petitioner was not arrested during day time. The factum with regard

to mentioning of 0023 hours at serial No.3 of the FIR regarding time of occurrence itself is a question of fact as to whether it was an inadvertent typographical mistake or not which can be seen at the time of trial. The mentioning of time of 0023 hours in the FIR cannot lead to a conclusion that the SSP filed a false affidavit in the earlier case. Therefore, the first contention raised by learned counsel for the petitioner that the SSP had filed a false affidavit in the earlier case does not carry any weight and is without any substance. No inference can be drawn on this basis that the affidavit was false. Even now in the present case when the affidavit has been filed by the S.P., it has been clarified that the petitioner was arrested in the evening. The other argument raised by learned counsel for the petitioner that the affidavit of the SSP in the earlier petition did not mention a lady constable in uniform would also not carry any weight in view of the fact that the presence of such lady constable was never denied in the said affidavit. Therefore, no adverse inference can be drawn in this regard. Therefore, the plea raised by learned counsel for the petitioner that the present bail application may be considered in the light of the fact that earlier a wrong affidavit was filed by the SSP is unsustainable and therefore rejected.

The alleged recovery in the present case is of 32,500 intoxicant tablets which is a commercial quantity and therefore the bar contained in Section 37 of NDPS Act is required to be considered. A departure can be made from the bar which is contained in Section 37 of NDPS Act on the ground that when the Court is satisfied that there are reasonable ground for believing that he is not guilty of such offence and that he is not likely to

commit an offence while on bail then the Court can consider the grant of bail in the facts and circumstances of a case. However, in the present case there is neither any sufficient ground nor is this Court satisfied that there is any reasonable ground for believing that he is not guilty for such an offence or that he is not likely to commit any offence while on bail. Therefore, no departure can be made from the bar contained in Section 37 of the NDPS Act.

In view of the above, the present bail petition is dismissed.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant for the purpose of deciding the present petition only.

10/11/2020
Vijay Asija

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No