

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

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CRM-M-21359 of 2020

Date of decision:25.9.2020

Kulwant Singh @ Gora

... Petitioner

versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

Present: Mr.P.S.Sekhon, Advocate,
for the petitioner
Rana Harjasdeep Singh, DAG, Punjab
...

AMOL RATTAN SINGH, J. (Oral)

All cases listed today have been taken up for hearing by way of video conferencing because of the situation existing due to the Covid-19 pandemic.

Pursuant to the order dated 6.8.2020 (and subsequent orders), an affidavit of the Deputy Superintendent of Police, Dirba, District Sangrur, has been filed, effectively stating therein that the petitioner was arrested upon 6000 tablets of Clovidol having been found in his possession in a polythene bag, which (as per the FIR) fell off a scooty, upon the police party which had secret information of him carrying such contraband, having stopped him.

As already noticed in the previous orders, Mr.Sekhon, learned counsel for the petitioner, had submitted that there is non-compliance of Section 52-A of the NDPS Act, 1985, which contention this court had, at least *prima facie*, not agreed with at the time that the contention was raised,

but with him further submitting that there is also non-compliance of Section 42(2) of the Act, with that provision reading as follows:-

“42. Power of entry, search, seizure and arrest without warrant or authorisation.-

(1) xx xx xx

(2) Where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior.”

He submits that the report made under Section 42 of the Act (copy Annexure P-2) is in fact not addressed to any gazetted officer, though the vernacular version thereof carries a one line hand written observation signed by a DSP, to the effect that the report had been seen and that it be annexed with the case. He submits that in fact the said observation/direction was only added subsequently.

He next submits that neither has the said DSP been cited as a witness after the report under Section 173 of the Cr.P.C. was submitted, nor even has any of his subordinates been cited as a witness to even identify his signatures.

Learned State counsel on the other hand submits that the recovery of the contraband being of commercial quantity, and there being another criminal case registered against the petitioner under the provisions of the NDPS Act, (with him earlier having been acquitted in another criminal case registered against him), he does not deserve to be admitted to bail.

However, he does not deny the other contention of learned counsel for the petitioner, to the effect that the petitioner has been in custody for 10 months now and that no prosecution witness has been examined, with the trial obviously not progressing any further at this stage due to the current pandemic.

Keeping in view the entire circumstances narrated hereinabove, without making any comment on the actual merits of the case, in my opinion, the petitioner needs to be admitted to bail upon him furnishing adequate bail bonds and surety bonds to the satisfaction of the learned trial court/CJM/Duty Magistrate concerned.

Ordered accordingly.

The petition is therefore allowed.

It is to be noticed that pursuant to the last order passed, the DSP, Dirba, is present in court through video conferencing, and has tendered an apology for not having even dated the affidavit that he was filing in court, with him also not having given the name of the place where it was executed.

The affidavit is still being taken on record, simply for the reason that it is seen to have been attested by the Executive Magistrate, Sunam Udham Singh Wala, on 9.9.2020.

25.9.2020
pk

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No