

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

209 - CRM-M-24599-2020 (O&M)

Date of Decision: 01.09.2020

Sikander Singh

... Petitioner

VS.

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE GIRISH AGNIHOTRI

Present: Mr. Ruhani Chadha, Advocate for the petitioner

Mr. PS Walia, AAG Punjab

GIRISH AGNIHOTRI, J. (Oral)

The matter has been taken up through video conferencing on account of lockdown due to outbreak of COVID-19 pandemic.

Petitioner – Sikander Singh, stated to be aged 30 years, has filed the present petition under Section 439 CrPC *inter alia* praying for grant of regular bail in case FIR No.43 dated 18.08.2019 under Sections 21/22/27/29 of NDPS Act, 1985 registered at PS Tallewal, District Barnala.

Learned counsel for the petitioner makes manifold submissions. Firstly, by making reference to the FIR, he submits that as per the allegations in the FIR, a secret information was received that Sikandar (the present petitioner) is allegedly involved in selling intoxicant syrups and intoxicant capsules in the village. Secondly, he submits by making reference to the order dated 04.03.2020 passed by the Special Court, Barnala that in fact as per the allegations of the investigating agency accused found in possession of 95 strips of intoxicated tablets and 93 vials of intoxicated liquor. Thirdly, it is submitted that FSL report dated 03.12.2019 under the head of ingredients, it is firstly mentioned ingredient *Carisoprodol* 349.8 mg/tablet. He submits that the said drug is a Schedule-H drug and is not covered under the ambit of

NDPS Act, 1985. Similarly, it is urged that the next ingredient salt *Chlorpheniramine Maleate*, is also a Schedule-H drug and the same is also not covered under the said Act. Reliance has been placed on the judgment of this Court in **CRM-M-5632-2010 (Jagjit Singh vs. State of Punjab)** decided on 16.07.2012 to submit that the third salt *Codeine Phosphate* is such a salt *qua* which a Review Committee was constituted under the directions of this Court and the said Committee has recommended that the said drug is a Schedule H and therefore not covered under NDPS Act. The relevant part of the said recommendations as quoted in **Jagjit Singh's** case (supra), is reproduced as under:-

“Review committee have gone through the case file and concerned record of this case. The Drugs Codeine Phosphate and chlorpheniramine Maleate in which the Drug Codeine Phosphate is covered at No. 35 of Notification No. 826 E Dtd. 14.11.1985 & hence not covered under NDPS Act, 1985 being in the form of Drugs dosage formulation whereas Drugs Chlorpheniramine, Maleate is a schedule H Drug under Drugs and Cosmetics Act, 1940. The Drug Dextropropoxyphene Hcl is covered at No. 87 of Notification No. 826 E Dt. 14.11.1985 & hence not covered under NDPS Act, 1985 being in the form of Drugs dosage formulation. Whereas Drugs Dicyclomine Hcl and Paracetamol are schedule H Drugs under Drugs and Cosmetics Act, 1940. As per record M/s Arsh Medical Agencies Ajit Road opp. St. No. 25/A Bathinda, Distt. Bathinda bearing Drugs license No.18108-OW & 17906-W granted on 27.1.2006 which are valid upto 26.1.2011 & the firm has further applied for its renewal vide challan No. 503566 dtd. 25.2.2011. In these licenses Sh. Jagjeet Singh S/o Sh. Jaskaran Singh is the sole prop. Of the firm and Sh. Pilot Kumar S/o Sh. Gheeta Ram is the competent person of the firm. At the time of occurrence petitioner Jagjit Singh s/o Jaskaran Singh R/o Ghudda Distt. Bathinda did not produce valid drugs licences and purchase bills for drugs recovered from him on date of recovery. Hence Committee is of the opinion that

Jagjeet Singh may be prosecuted under Section Drugs and Cosmetics Act, 1940 and Rules 1945.

Learned State counsel, on instructions from SI Malkit Singh, submits that the petitioner was arrested on 18.08.2019. He submits that challan in this case was submitted on 13.02.2020. There are a total of 31 witnesses and the charges have not yet been framed. Accordingly, no witness has been examined till date. He however, submits that there is a heavy recovery and apart from the petitioner, there are 3 more co-accused whose name came up during investigation. From the co-accused Rashi and Shamshed Mohammad, heavy recovery was made and Rs.6.40 lakhs drug money was also recovered. He submits that the third co-accused Kuldeep Singh is also involved and is basically belongs to Ghaziabad (UP).

Faced with this situation, learned counsel submits that the petitioner has already completed more than one year of custody. He submits that the petitioner has a good *prima facie* case on merits. He further submits that the petitioner is not involved in any other case. Counsel then submits that due to the present COVID-19 situation, detention of the petitioner in jail is dangerous to his life, therefore, petitioner may be granted concession of regular bail.

In view of the peculiar facts as noticed above, considering the existing situation due to COVID-19 and the fact that trial is likely to take some time, this Court deems it appropriate to direct the release of the petitioner on regular bail subject to his furnishing adequate bail bonds/surety bonds to the satisfaction of the Duty Magistrate/trial court concerned.

In addition, the petitioner is directed get an FDR made of Rs.10 lakhs in his own name and shall keep the same valid/renewed till the completion of trial. The petitioner will give an undertaking that he would not

encash the said FDR till conclusion of trial. The same shall be without prejudice to the defence of the petitioner before the trial Court.

It is made clear that in case the petitioner is found involved subsequently in such/similar incident and is found guilty, the FDR amount shall be forfeited and be deposited in the Government Treasury.

However, it is made clear that anything observed herein shall not be construed as an expression on merits of the case.

01.09.2020

vishal shonkar

(Girish Agnihotri)
Judge

- 1. *Whether speaking/reasoned?*
- 2. *Whether reportable?*

Yes/No
Yes/No