

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

CRM-M-31118-2019(O&M)

Date of decision:-21.9.2020

Harjot Singh

...Petitioner

Versus

State of U.T., Chandigarh

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.A.D.S. Sukhija, Advocate
for the petitioner.

Mr.Amit Kumar Goyal, APP, U.T., Chandigarh.

H.S. MADAAN, J.

Case taken up through video conferencing.

This petition for regular bail has been filed by petitioner –
Harjot Singh, aged about 44 years – an accused in FIR No.90 dated
13.4.2019 for the offence under Section 22 of NDPS Act, registered at
Police Station 34, Chandigarh.

Briefly stated, the facts of the case as per prosecution story

are that on 13.4.2019, a police party from Police Station Sector 34, Chandigarh was present near BJP Bhawan, Sector 33-34 light- point, when at about 11:00 a.m., a secret information was received that petitioner/accused Harjot Singh having a chemist shop being run under the name and style Satnam Medicos, Booth No.4, Sector 33, Chandigarh had been selling intoxicant medicine and at that time, he was standing in front of his shop in the car parking having intoxicant medicine and syrup kept in a car bearing registration No.CH-04E-6107 make Corolla Altis and if a raid was conducted he could be caught red handed. The police party accordingly conducted raid at the disclosed place and observed the accused standing in the car parking in front of Satnam Medicos near car bearing No.CH-04E-6107 make Corolla Altis. He was apprehended. ASP(South) was informed, who arrived at the spot. The car of accused was searched by Inspector Gurnam Singh under the supervision of ASP (South) and five cartons were found to be there on backside of the car, each carton contained four polythene packing and each polythene packing had 30 plastic bottles of CHLOROPHERAMINE MALEATESCODEINE PHOSPHATE SYRUP 100 ml, Batch No.1201 MFG. DATE MARCH 2019 EXP. DATED 2021 FEB, total number being 660 bottles. A big white bag was also recovered from the car containing 26 bottles and CHLORPHENIRAMINE MALEATESCODEINE PHOSPHATE SYRUP 100 ml. Batch No.21128, MFG DATE DEC. 2018 EXP DATE 2018. In addition to that a small box of white, blue and red colour having TARAMADOL HYDROCHLORIDE PROLONGED RELEASE TABLETS in the form of 20-20 strips of tablets in each box, each strip

having 10 tablets were recovered. The total number of tablets recovered was 400. The accused could not produce any licence, permit or bill. The recovered material was seized. Accused was arrested in this case. Formal FIR was registered. Challan against the accused was presented in the Court and the case is pending trial. The petitioner had filed application for regular bail in the Court of Sessions, which was declined by learned Judge, Special Court, Chandigarh vide order dated 15.7.2019, as such, he has approached this Court with the same request.

Notice of the petition was given to respondent – State and counsel representing the State has put in appearance and opposes the petition.

I have heard learned counsel for the parties besides going through the record.

Even as per own case of the prosecution, the petitioner is a chemist. However, the question arises whether the petitioner was in legal possession of the intoxicant bottles of syrup and tablets, the answer is in negative. The recovery had been effected from the car belonging to the petitioner, which was standing in the parking place in front of his chemist shop. For proving his legally authorized possession of such articles, he needs to have produced bill, voucher, cash memo to show that he had in fact purchased such articles. He could have produced his stock register containing the relevant entry in that regard but obviously he has failed to do so. Merely because the petitioner is a chemist does not mean that he can have possession of any medicine or drug especially of the types, which can be used as intoxicants without any licence or permit. A chemist

may purchase such drugs and medicines in terms of the licence granted to him and keep those in his chemist shop for sale to the customers on presentation of medical prescription but keeping such drugs and tablets in huge quantity in the car without having any bill, cash memo, voucher to show the valid purchase and authorized possession thereof points out that such bottles of intoxicant syrup and intoxicant tablets were meant for illegal sale.

Learned counsel for the petitioner has referred to statements of various persons recorded during investigation of the case. As per statement of Ashish Tuli running wholesale medicine shop under the name and style of JMD Pharmaceuticals, Chandigarh, he had purchased about 6000 piece of Onrex CC from Winds Bitech Baddi, District Solan (HP) and on 9.4.2019 he had given 600 piece to wholeseller Virender Kumar of Dev Pharma for Rs.23,520 vide a bill. Statement of Surinder Mohan Ahluwalia, Distribution Manager, Winds Biotech Baddi (HP) is also on those lines. Statement of Updesh Yadav, Manager, Stores of Biogenetic Drugs Pvt. Ltd. village Jhamazri, Tehsil Baddi, District Solan (H.P.) is also there. Thus the bottles of syrup being sold to Virender Kumar comes out to be there but then Virender Kumar is not shown to have legally and validly sold the bottles of syrup to the present petitioner. Rather he has arrayed as a co-accused in this case on the allegations that he had supplied the contraband to Harjot Singh petitioner, who had been in illegal and unauthorized possession thereof for the purpose of sale to drug addicts. Even as per those statements, the sale of such bottles of syrup and tablets are shown to be up to Virender Kumar, who is co-

accused of the present petitioner but then there is nothing on record to show that Virender Kumar had legally and validly sold such bottles of intoxicant syrup and intoxicant tablets to present petitioner Harjot Singh. Though learned counsel for the petitioner has argued that Virender Kuamr has since been granted bail by this Court and case of the petitioner is on better footing but such argument lacks merit. A distinction can certainly be made that sale of bottles of syrup in favour of Virender Kumar is shown to be there by the wholeseller but no valid transfer from him to Harjot Singh is shown to be there. The petitioner/accused could not produce any such evidence before the Investigating agency also. Such huge recovery amounting to commercial quantity points out that the prosecution story to the effect that accused had been indulging in drug peddling, is to be taken seriously and for this reason and on account of the fact that offence under Section 27-A NDPS Act has been added in the FIR, the petitioner is not entitled to regular bail.

Section 37 of the Act reads as under:

Offences to be cognizable and non-bailable.—(1)

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for 3 [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to

oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(iii)(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.

There is nothing to record satisfaction that there are reasonable ground for believing that petitioner is not guilty of that offence or that he has not committed any offence.

It is unfortunate that in garb of running a medical store, the petitioner has been indulging in drug peddling just for monetary consideration without bothering that in the process he was putting lives of several persons in risk. Such type of persons need to be dealt with firmly and sternly and no misplaced sympathy can be shown to them since that would rather encourage drug trafficking.

Keeping in view the heavy quantity of contraband involved, bar of Section 37 of the Act, no ground for grant of regular bail to the petitioner is made out.

Therefore, finding no merit in the petition, the same stands dismissed.

21.9.2020

Brij

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No

(H.S.MADAAN)

JUDGE