

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

CRM-M-37687-2020(O&M)

Date of decision:03.12.2020

Hemant Kumar

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Bikramjeet Singh Jatana, Advocate,
for the petitioner

Mr. V.G.Jauhar, Sr. Deputy Advocate General, Punjab
for the respondent.

ANIL KSHETARPAL, J.

The hearing of the case was held through video conferencing,
on account of restricted functioning of the Courts.

This is second petition for grant of bail pending trial in a
criminal case arising from FIR No.0222, dated 24.08.2019, registered under
Sections 22/25 of Narcotic Drugs and Psychotropic Substances Act 1985, at
Police Station Sardulgarh District Mansa.

The first petition was dismissed as withdrawn, with liberty to
file a fresh one.

As per the case of the prosecution, 2 boys, including the
petitioner, were seen coming on a motorcycle. On being intercepted by the
police, they tried to run away and in that process, they fell on the ground. A
bag, also, fell down and 650 strips of Cavilodol 100-SR containing
Tramadol Hydrochloride intoxicating tablets, were recovered, as the zip of
the bag broke open. The strips scattered on the ground. On being

apprehended, both the accused disclosed their names as Hemant Kumar (the petitioner), who was driving the motorcycle and Jarnail Singh, who was the pillion rider.

It may be noted here that two applications filed by Jarnail Singh, have already been dismissed. Whereas one accused Sushil Kumar @ Monu, who was nominated as an accused, on the disclosure statement, has been granted bail, vide order dated 19.08.2020, as there was no recovery of any narcotics from him.

Learned counsel, appearing for the petitioner, has contended that since the recovery of the intoxicating tablets was made from the ground (the mother earth), therefore, the petitioner cannot be presumed to be in conscious possession of the intoxicating tablets. The petitioner is in custody for 1 year and 3 months and is a first time offender and, therefore, the petitioner deserves to be granted bail.

On the other hand, learned senior Deputy Advocate General, Punjab, has contended that it is not the case of the petitioner that there is any confusion with regard to conscious possession. He submits that since the petitioner along with another, on being intercepted, tried to immediately take a U-turn and in that process fell down and a bag, placed between them, also, fell on the earth. Since, the zip of the bag got torn, therefore, certain strips scattered out, on the ground. He submits that the petitioner cannot take benefit of the aforesaid.

It may be noted here that learned counsel, for the petitioner, has relied upon various orders, passed in various petitions, granting bail to the accused. Learned counsel contends that in all these cases, the bail has been granted because there was no recovery from the conscious possession as the

recovery of the intoxicant was made by the police from the ground. The details of the orders cited, by learned counsel for the petitioner, are as under:-

Sr. No.	Case No.	Party Name
1.	CRM-M-21020-2020	Amritpal Singh Lamberdar v. State of Punjab
2.	CRM-M-16380-2020	Buta Singh v. State of Punjab
3.	CRM-M-14474-2020	Dharminder Singh v. State of Punjab
4.	CRM-M-6433-2018	Pawan Kumar v. State of Punjab
5.	CRM-M-13663-2020	Niranjan Kumar @ Kaka v. State of Punjab

This court has carefully gone through each of the order.

In the case of Amritpal Singh Lamberdar, in the facts of the case, the Court granted bail. Similarly, in the case of Buta Singh, 155 grams intoxicating powder was, allegedly, thrown by the accused and the petitioner was granted bail as the trial of the case was not making any progress. In the case of Dharminder Singh, a packet containing 20 vials of Onerex, a cough syrup, was allegedly thrown by the petitioner. Keeping in view the facts of the case, the petitioner in the aforesaid case was granted bail.

Similarly, in the case of Pawan Kumar, 31 vials Relaxcof (a cough syrup) and 320 tablets of Carisoma, were recovered from the bag thrown away by the pillion rider. The Court after noticing that co-accused has, also, been granted bail, granted bail to the petitioner in that case.

In the case of Niranjan Kumar @ Kaka, although, quantity of the recovered narcotics is not apparent but certain bottles and tablets were recovered from the bag thrown away by the accused. In the facts of the case, the court granted bail.

This court has carefully examined Section 35 of the Narcotic

Drugs and Psychotropic Substances Act, 1985. The Statute requires that the court shall presume culpable mental state of the accused. The presumption which is required to be drawn by the court is couched in the word 'shall' which makes it mandatory. Whereas, Section 54 of the Narcotic Drugs and Psychotropic Substances Act, 1985, itself makes a provision that the court may presume unless and until the contrary is proved that the accused has committed an offence.

Further, in this case, it is not the case of the petitioner that there was uncertainty with regard to the identity of the accused because there were a lot of persons present at the place of occurrence. On a reading of the FIR, it is apparent that the petitioner was caught near Balraj College Chowk, Sardulgarh. From the orders, relied upon by learned counsel for the petitioner, it is not possible to decipher as a ratio decidendi that whenever the recovery of intoxicating tablets is from the floor/earth, then the presumptions, as envisaged by the statute, are not attracted. The bail applications in aforementioned cases have been decided on the facts of each case.

The recovery from the petitioner falls in the category of commercial quantity. While deciding bail application of Jarnail Singh, it has been noticed that 3 prosecution witnesses have already been examined.

Keeping in view the aforesaid facts, this court does not find it appropriate to grant concession of bail to the petitioner.

Hence, dismissed.

03rd December, 2020

nt

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE