

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-35613-2019 (O&M)
Date of decision: 30.01.2020

Sher Singh

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Sumit S. Bairagi, Advocate for
Mr. S.K. Passi, Advocate
for the petitioner.

Mr. Ajay Pal Singh Gill, DAG, Punjab

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for grant of regular bail in FIR No.26 dated 15.03.2019 under Section 22 of NDPS Act, registered at Police Station Sadar Sri Muktsar Sahib, District Sri Muktsar Sahib.

Learned counsel for the petitioner submits that the petitioner is a licensed Pharmist and has relied upon his licence issued by the Punjab State Pharmacy Council dated 13.03.2014 and he was appointed as qualified person by M/s Guru Nanak Medical Store. It is further submitted that as per allegations in the FIR, on 15.03.2019, SI Raj Singh, while on patrol duty, stopped a motorcycle, which was driven by the petitioner and thereafter, he gave him a notice under Section 50 of NDPS Act to be searched before a Gazetted Officer or a Magistrate. When the petitioner reposed confidence in the same

Investigating Officer, consent memo was prepared and SI Raj Singh tried to join the independent witness, but no one was available. Thereafter, personal search of the petitioner was conducted and 900 tablets of Clovidol 100 SR containing the salt tramadol hydrochloride were recovered.

Learned counsel for the petitioner further submits that no information was sent by SI Raj Singh to the police station, prior to completing the investigation and effecting the recovery from the petitioner. As per the FIR itself, the ruqa was sent after the investigation was completed at the spot by the same Investigating Officer/SI Raj Singh. It is thus submitted that the Investigating Officer himself is the complainant and it will be a debatable issue to be decided during the course of trial, whether proper procedure under Section 50 of NDPS Act was followed or not and therefore, in view of judgment dated 29.01.2020 passed in **SLP (Crl.) Nos.7281-7282 of 2017 (Sushila Aggarwal and others Vs. State (NCT of Delhi) and another)**, wherein the Hon'ble Supreme Court has held that if there is a reasonable possibility that an accused may be acquitted, he can be granted the concession of bail.

Learned State counsel, on the basis of short reply by way of affidavit of Senior Superintendent of Police, Sri Muktsar Sahib, has not disputed the fact that SI Raj Singh is the complainant as well as the Investigating Officer. It is also not disputed, as per paras No.3 & 4 of the affidavit that the ruqa was sent at a stage, when the investigation was completed.

Without commenting anything on merits of the case, considering the aforesaid submissions made by learned counsel for the parties and in view of judgment of the Hon'ble Supreme Court in **Sushila Aggarwal's** case (supra),

this petition is allowed and the petitioner is directed to be released on regular bail subject to furnishing his bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate, concerned.

Petition is disposed of.

[ARVIND SINGH SANGWAN]
JUDGE

30.01.2020

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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No