

CRM-M No. 48634 of 2019 (O&M)

Date of decision : 25.09.2020

Jasbir Singh @ Sukh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Kuljit Singh Bal, Advocate
for the petitioner.

Mr. Sukhbeer Singh, Asst. AG, Punjab.

SUVIR SEHGAL J. (ORAL)

The hearing of the petition has been taken up through video conferencing due to spread of Corona Virus (Covid-19) pandemic.

Present petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail in FIR No. 122 dated 29.07.2019 registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and Section 29 of the NDPS Act added later on, at Police Station City Patti, District Tarn Taran, Annexure P-1.

As per the version of the prosecution, two FIRs were registered against the accused-petitioner at Police Station City Patti, District Tarn Taran, the details of which are as follows:-

(i) FIR No. 121 dated 29.07.2019 under Section 29 of the NDPS Act on the allegation that one Jasbir Kaur was apprehended with 1900 intoxicating tablets, who during her disclosure statement stated that she had purchased the same from the

petitioner. Accordingly, the petitioner was nominated as an accused in the FIR.

- (ii) FIR No. 122 dated 29.07.2019 under Section 22 (Section 29 added later on) of the NDPS Act (Annexure P-1) on the allegation that 50,000 intoxicating tablets were recovered from the petitioner.

Learned counsel for the petitioner has argued that the petitioner is a chemist and is the proprietor of M/s Sukh Medical Store, V.P.O Toot, Tehsil Patti, District Tarn Taran. The petitioner possesses a valid wholesale drug licence (Annexure P-3) in his name issued in Form 21C under the provisions of the Drugs and Cosmetics Rules, to sell, stock or exhibit or offer for sale or distribute drugs. Counsel submits that the licence issued was renewed from 06.06.2016 to 05.06.2021 by the Licensing Authority, Department of Drugs Control, Government of Punjab. By placing reliance upon the GST Invoice bearing No. PKR0000050 dated 14.07.2019 (Annexure P-4), counsel has urged that the petitioner had made bulk purchases of various types of tablets and capsules from M/s PKR Remedies, Saharanpur, U.P., which included 50,000 tablets of Clovidol in 10 boxes containing 50 strips of 10 tablets each. Counsel submits that the recovery of the alleged quantity of 50,000 tablets was effected from his shop where he was licensed to stock the same. The argument raised by the counsel is that being a licensed chemist, the alleged recovery from him at best would attract the provisions of the Drugs and Cosmetics Act, 1940 and that also in case it is found that the quantity in his

possession was in excess of the limit prescribed under the provisions of the said Act. He submits that the petitioner is in custody since more than a year and due to the outbreak of the Corona Virus pandemic, the trial is not likely to conclude in the near future, therefore, the petitioner deserves to be enlarged on bail.

Opposing his petition, learned counsel for the State has argued that the petitioner was found to be in possession of drugs which fall in the category of commercial quantity under the NDPS Act. He has disputed the fact that the recovery was effected from the premises of the shop of the petitioner. He submits that the possession of the licence by the petitioner is not a defence. Upon instructions from ASI Davinder Singh, State counsel submits that the challan was filed on 16.01.2020, charges were framed on 04.02.2020 and there are total 13 prosecution witnesses, but none has been examined. He argues that the trial is under way. State counsel has filed the custody certificate dated 25.09.2020, which is taken on record and on the basis of the same, he submits that the petitioner is involved in a third FIR bearing No. 141 dated 29.11.2017, registered under the provisions of the NDPS Act.

I have considered the rival submissions of the parties.

From the arguments addressed by the learned counsel for the parties, it is apparent that the issue as to whether the recovery was effected from the premises of the shop of the petitioner or from some outside place, is debatable. Still further, if at all, he is found to be in possession of drugs in excess of the prescribed quantity, whether the petitioner will be liable to

under the provisions of the NDPS Act, is another aspect which may be required to be determined.

An examination of the custody certificate shows that the petitioner has remained in custody from 01.08.2019 to 21.12.2019 and again from 10.01.2020 to 24.09.2020, this is, for a total period of one year, one month and four days.

Keeping in view the fact that the petitioner is a licensed chemist, the period of incarceration of the petitioner and the fact that the trial of the case is likely to consume considerable time due to the spread of the contagion, further custody of the petitioner is not justified. Therefore, without expressing any opinion on the merits of the case, it is ordered that the petitioner be enlarged on bail pending trial subject to his furnishing requisite bail bonds/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate.

The petition is accordingly allowed.

It is clarified that any observation made hereinabove shall not be construed to be an expression on the merits of the case.

(SUVIR SEHGAL)
JUDGE

25.09.2020

Maninder

Whether speaking/reasoned : Yes

Whether reportable : Yes