

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

CRM-M No.2037 of 2020 (O&M)
Date of Decision: 19.04.2021

Sukhpal Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Parminder Singh Sekhon, Advocate
for the petitioner.

Mr. Ajay Pal Singh Gill, DAG, Punjab.

RAJ MOHAN SINGH, J. (ORAL)

The case has been taken up for hearing through video conferencing.

The petitioner seeks grant of regular bail under Section 439 Cr.P.C. in case bearing FIR No.210 dated 09.09.2019 under Section 22 of NDPS Act, registered at Police Station Raman, District Bathinda.

As per prosecution case, the FIR was registered on the basis of suspicion. The petitioner was apprehended and 1550 tablets of Tramadol Hydrochloride having batch No.TDP-19020 were allegedly recovered from the transparent polythene bag, which was placed over the fuel tank of the motorcycle. As

per ruqa, ASI Jaskaran Singh called for investigating officer at the spot. As per the prosecution case, on the ruqa of ASI Jaskaran Singh, Paramjit Singh SI/SHO reached the spot and he effected personal search as well as prepared memo of intimation of rank, arrest and information to relatives.

Learned counsel for the petitioner submits that the recovery proceedings were conducted by ASI Jaskaran Singh and after conducting the proceedings, he produced the case property as well as the accused before the investigating officer even by putting his own seal on the parcel and sample seal was also of his impression "JS". The investigating officer only conducted personal search and prepared memo of intimation of rank etc. The personal search was also conducted at the spot. In memo of intimation, the investigating officer did not disclose his rank rather simply said that he is SI Paramjit Singh and is posted at Police Station Raman.

Learned counsel for the petitioner further submits that when personal search of the petitioner was conducted by the police, compliance of Section 50 of the NDPS Act was mandatory. He refers to ***State of Rajasthan Vs. Paramanand and another, 2014 (2) RCR (Criminal) 40***. Learned counsel for the petitioner further submits that the alleged recovery was from a transparent polythene bag and refers to ***Binder Kaur @ Goga***

Vs. State of Punjab, CRM-M No.4584 of 2020, decided on 06.02.2020 and contended that a person indulge in the trade of contraband would not do the trading in a transparent bag and this is one of the factor that will add to the *mala fides* of the police in implicating the petitioner. This fact would also mitigate against the complicity of the petitioner in the present case. The petitioner is not involved in any other case and has no such antecedent behavior of criminal activity, therefore, regor of Section 37 of the NDPS Act, *prima facie* would not apply.

Learned State counsel could not dispute the factum of memo of presenting the case property along with the accused before the investigating officer by ASI Jaskaran Singh on 09.09.2019. However he submitted that the recovery of contraband falls under the commercial quantity and the personal search was not in the context of NDPS Act, rather the same was under Cr.P.C. Personal search memo bearing FIR number and the offences under NDPS Act would remain debatable even on the basis of arguments raised by learned State counsel. The petitioner is in custody since 09.09.2019. After framing of charge, no prosecution witness has been examined. Now there is again surge in COVID-19 and the trial of the case may take some time in its culmination.

Owing to the aforesaid facts and circumstances of the case, I deem it appropriate to enlarge the petitioner on regular bail.

In view of above, petition is allowed. Petitioner is ordered to be released on bail, subject to his furnishing adequate bail bonds/surety bonds to the satisfaction of the trial Court/concerned Duty Magistrate.

Nothing observed hereinabove, shall be construed to be an expression of opinion on the merits of the case.

(RAJ MOHAN SINGH)
JUDGE

19.04.2021

sandeep

Whether Speaking/Reasoned : Yes/No

Whether Reportable : Yes/No