

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Sr. No.213

CRM-M-3317-2020 (O&M)
Date of decision: 24.11.2021

Amit Kumar

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. M.S. Saini, Advocate and
Mr. Tushar Wadhwa, Advocate
for the petitioner.

Mr. Saurav Khurana, DAG, Punjab.

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DEEPAK SIBAL, J. (Oral)

The present petition has been filed under Section 439 Cr.P.C. for the grant of regular bail in FIR No.0057 dated 29.03.2019, registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short – the NDPS Act) (Section 177 IPC added later on) at Police Station Tanda, District Hoshiarpur.

Briefly stated, the case of the prosecution is that on 29.03.2019, a police patrol party saw a person who on seeing the police party threw one plastic bag on the road side and then try to flee. From the plastic bag thrown by the said person 1600 capsules were recovered. Suspecting the recovered capsules to contain psychotropic substances/drugs, the said person was arrested. On being questioned, he disclosed his name as Sumit Kumar @ Sonu son of late Sewa Ram. After registration of a FIR, the matter was investigated which revealed that the petitioner, at the time of his arrest, had disclosed a wrong name as also his parentage as his actual name was Amit

Kumar son of Ramesh Kumar. Accordingly, in addition to the offences

under the NDPS Act, the petitioner was also sought to be prosecuted under Section 177 IPC. Chemical examination of the capsules recovered from the petitioner revealed that 950 of them contained Pervorin Spas and 650 capsules were containing Tramadol Hydrochloride.

Learned counsel for the petitioner submits that the petitioner has been falsely implicated in this case; the petitioner was arrested on 29.03.2019 but on 19.07.2019, awaiting report from the FSL was released on interim bail; on receipt of the report he surrendered on 05.10.2019; the FIR and all other documents at the time of arrest of the petitioner are in the name of Sumit Kumar and since the petitioner is Amit Kumar, they do not relate to the petitioner; since the alleged recovery from the petitioner is of 1600 loose capsules and only 50 capsules were sent for forensic examination the entire quantity cannot be foisted upon him and that since in the petitioner's trial only 01 out of 13 prosecution witnesses has been examined, the same is likely to take a long time to conclude.

In support of his arguments, learned counsel for the petitioner also relied on a judgment of this Court in *State of Punjab vs. Dharam Singh, 2010(3) R.C.R. (Criminal) 94.*

Learned State counsel opposes the grant of bail to the petitioner on the ground that the petitioner has been found in conscious possession of 1600 capsules containing Pervorin Spas/Tramadol Hydrochloride; in addition to the present case, the petitioner has two other cases under the NDPS Act pending against him; the petitioner's conduct can be deciphered from the fact that at the time of his arrest he gave a wrong name to the police and that if he is released on bail, he is likely to indulge in similar offences.

There are three cases under the NDPS Act pending against the petitioner. He is thus a habitual offender in dealing with drugs as also has violated the terms of bail on at least two occasions. Further, the petitioner's non-cooperative conduct becomes clear when at the time of his arrest he tried to mislead the police party by disclosing a wrong name and parentage.

In addition to the above, in the instant case, the petitioner is alleged to have been carrying 1600 capsules containing Pervorin Spas/Tramadol Hydrochloride which chemicals come under the definition of "Psychotropic Substances" under the NDPS Act. Such recovery is also classified as "commercial".

The judgment in Dharam Singh's case (supra) does not support the petitioner's case because even if the petitioner is accused of being in possession of 50 capsules which were sent for FSL examination, the same would not entitle him for bail for the afore-referred reasons of being involved in three cases under the NDPS Act; for having earlier misused the concession of bail on two occasions and for having attempted to mislead the police party at the time of his arrest by giving a wrong name and parentage.

Dismissed.

In view of the fact that the petitioner is in custody for the last over 02 years, the Trial Court is directed to dispose of the petitioner's trial within six months from the next date fixed before it, in accordance with law. However, such direction shall be subject to the petitioner's cooperation.

November 24, 2021

Jyoti 1

Whether speaking/reasoned
Whether reportable

(DEEPAK SIBAL)

JUDGE

Yes/No
Yes/No