

Pargat Singh @ Pagga

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Ms. Satwant Mehta, Advocate for the petitioner.

Mr. Randhir Singh Thind, DAG, Punjab.

Through Video Conference**JASGURPREET SINGH PURI, J. (Oral)**

The present petition has been filed under Section 439 of Criminal Procedure Code, for grant of regular bail to the petitioner in FIR No.74, dated 14.09.2018, under Section 22 of Narcotic Drugs and Psychotropic Substances Act, 1985 registered at P.S. Valtaha, District Tarn Taran.

Learned counsel for the petitioner has submitted that it is a case where the present FIR was falsely planted against the petitioner. He has submitted that the petitioner is not indulged in any such kind of activity and is not involved in any other case and has no bad antecedents. She has submitted that recovery shown from the petitioner is of 1020 tablets of Dixyphenalate Hydrochloride (LOMOTIL). A perusal of the FIR as well as the affidavit filed by the State would show that 51 strips were allegedly confiscated from the petitioner but the police had sent only one strip

containing 20 tablets to the forensic science laboratory and the report of the forensic laboratory is at Annexure P-4, which shows that only one strip was sent as a sample. She has submitted that neither the FIR, nor the affidavit filed by the State shows that there was any batch number or any other code or correlation between the strips and therefore, these strips may not be identical. She submitted that these different strips which according to the prosecution itself have no batch number, can be termed as loose strips. She relied upon a judgment of this Court in *State of Punjab versus Dharam Singh 2010(3) RCR (Criminal) 94*, to contend that in such like circumstances if a sample is sent for forensic laboratory then the same cannot be presumed to contain the same salt as found in the other tablets which are not sent for forensic report. She has further submitted that the petitioner is in custody since 19.01.2019 which is 2 years 9 months and 17 days and only two witnesses out of seven cited witnesses have been examined till date. She submitted that the bar contained under Section 37 of the NDPS Act would not apply in the present case although the total average weight as stated in the affidavit before this Court comes out to be 64 grams which is a commercial quantity which is fixed at 50 grams under the schedule of the NDPS Act. She submitted that such weight can be calculated only when either of the alleged tablets is having the same batch number or are identical with each other and a sample is sent or the entire confiscated material is sent to the FSL, only then such weight can be calculated and therefore, at this stage there is a prima facie case in favour of the petitioner to presume that the petitioner is not guilty. She has submitted that since the petitioner is not involved in any other case and the bar

contained under Section 37 of the NDPS Act would also not be applicable, therefore, the petitioner may be considered for the grant of regular bail.

On the other hand, learned State counsel has stated that from the perusal of the FIR and the affidavit filed by the State it is not discernible that the strips were having a batch number. However, he has submitted that since the confiscated quantity was of a commercial quantity, the case of the petitioner would certainly hit the bar contained under Section 37 of the NDPS Act. However, he has submitted that there is no dispute that the petitioner is not involved in any other case and that the petitioner is in custody for the last 2 years 9 months and 17 days. The petitioner was earlier granted interim bail on the ground that the FSL report was awaited but when the FSL report has come the petitioner has surrendered before the jail authorities. However, there is nothing on the record to show that the petitioner has violated any of the conditions of the interim bail.

I have heard the learned counsel for the parties.

The custody period of the petitioner is 2 years 9 months and 17 days and the same is not in dispute and it is also not in dispute that the petitioner is not involved in any other case. The argument raised by the learned counsel for the petitioner, that the bar contained under Section 37 of the NDPS Act would not apply in view of the fact that only one strip which was not having any batch number was sent to the forensic laboratory and therefore it cannot be presumed to be identical with the other strips, does carry some weight. A perusal of the FIR as well as affidavit filed by the State in the present case would make it clear that neither any batch number nor any other identical mark has been mentioned anywhere so as to arrive at a conclusion that all these strips were identical in nature. Admittedly, only

one strip was sent to the forensic laboratory for examination. Mere fact that the total weight comes out to be 64 grams which is more than 50 grams which is a commercial quantity as stated in the schedule of the NDPS Act would not mean that a departure cannot be made to Section 37 of the NDPS Act.

Therefore, this Court is satisfied at this stage atleast in view of the facts and circumstances that only one strip was sent for forensic laboratory examination, Prima facie there is reason to believe at this stage that reasonable grounds exist that the petitioner is not guilty of such an offence. Since the petitioner is not involved in any other case and there is nothing on record to show that there is any likelihood that the petitioner may commit offence again, a departure can be made from the bar contained under Section 37 of the NDPS Act.

In view of the above, considering the totality of the present case, I deem it fit and proper to grant the concession of bail to the petitioner. The present petition is allowed. The petitioner shall be released on regular bail on his furnishing adequate bail/surety bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate, concerned.

It is made clear that the observations made hereinabove is purely for the disposal of the present bail petition and it will not reflect anything on the merits of the case.

(JASGURPREET SINGH PURI)
JUDGE

August 31, 2021
Manpreet

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No