

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-10003-2021 (O&M)
Date of decision: 03.11.2021

Dharminder Singh

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Talwinder Singh, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for grant of regular bail in FIR No.38 dated 23.05.2020 under Section 22 of NDPS Act, registered at Police Station Mehna, District Moga.

Learned counsel for the petitioner submits that as per allegations in the FIR, registered at the instance of ASI Varinder Kumar, he received a secret information that Harwinder Kumar and petitioner Dharminder Singh are indulged in the business of selling intoxicant tablets and by purchasing the same from unknown persons, they are coming on a motorcycle. On this, information was sent to the police station and thereafter, both the accused were apprehended. It is further submitted that after the petitioner was apprehended by ASI Varinder Kumar, first notice under Section 50 of NDPS Act was given, in

which it is stated that ASI has prepared a notice under Section 50(1) of NDPS Act and he should be searched before a Gazetted Officer, however, it is not mentioned that he has an option to be searched before a Magistrate or a Gazetted Officer.

Learned counsel has further argued that after DSP was called at the spot, a joint recovery memo was prepared with regard to both the accused. It is also submitted that preparation of a joint recovery memo from both the accused is not correct procedure as per provisions of NDPS Act/Rules. It is next submitted that co-accused Harwinder Kumar has already been released on regular bail by the Judge, Special Court, Moga vide order dated 22.06.2020, whereas the petitioner, as on today, is in custody for the last 01 year and 02 months and is not involved in any other case.

Learned State counsel has filed the custody certificate dated 02.11.2021 in the Court today and has not disputed the factual position.

Short reply by way of affidavit of Deputy Superintendent of Police, Dharamkot, District Moga is on record and in this affidavit, details of the investigation have been given and nothing has been stated about first notice given by ASI Varinder Kumar, in which it is not mentioned that the petitioner has a right to be searched before a Gazetted Officer or a Magistrate, however, when the DSP reached at the spot, second notice was given to be searched before the Gazetted Officer or a Magistrate.

A perusal of the recovery memo (Annexure R-2) would show that it was prepared jointly for both accused Harwinder Kumar @ Ravi and Dharminder Singh, whereas 1000 intoxicant tablets were recovered from

petitioner Dharminder Singh and 500 intoxicant tablets were recovered from co-accused Harwinder Kumar @ Ravi.

After hearing learned counsel for the parties, without commenting anything on merits of the case and considering the fact that the petitioner is first offender; he is in custody for the last 01 year and 02 months and out of total 13 prosecution witnesses, none has been examined so far, therefore, it will be a matter of trial whether joint recovery memo prepared by the Investigating Officer is in consonance with the provisions of NDPS Act, 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

03.11.2021
vishnu

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No