

**In the High Court for the States of Punjab and Haryana
At Chandigarh**

CRM-M-13166-2021 (O&M)
Date of Decision:- 23.12.2021

Gora Singh

... Petitioner

Versus

State of Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Sandeep Verma, Advocate for the petitioner.

Mr. Ajay Pal Singh Gill, DAG, Punjab.

Mr. Ankur Sharma, Advocate for respondent No.2-NCB.

GURVINDER SINGH GILL, J.

1. The petitioner has approached this Court seeking grant of regular bail in respect of a case registered vide case crime No.17 dated 7.3.2020 at Police Station Narcotic Control Bureau, Amritsar under Sections 8, 21, 22, 25, 27-A, 29 and 60 of Narcotic Drugs & Psychotropic Substances Act, 1985.
2. That on 7.3.2020, a specific information was received from a reliable source by Shri Ajit Pal Singh, Intelligence Officer, NCB, Chandigarh that two persons namely Gora Singh son of Malkit Singh (petitioner) and Sham Singh son of Kala Singh, both residents of Village Kingra, Tehsil Malout are involved in illegal trafficking of Tramadol tablets and today i.e. 7.3.2020, they are supposed to bring some huge quantity of Tramadol tablets in a golden colour Honda City car without any valid documents. They will be

coming from Mandi Dabhwali area and will be going towards Malout via Lambi area on 7.3.2020 after 2000 Hrs. or later any time. If surveillance is mounted at suitable place, the persons can be intercepted along with huge quantity of Tramadal tablets. Pursuant to receipt of said information, Narcotic Control Bureau (NCB) team mounted surveillance on Dabwali-Malout road and was able to intercept the golden coloured Honda City car matching with the received secret information, which was signalled to stop. The person driving the car disclosed his name as Gora Singh (petitioner) and the other person accompanying him disclosed his name as Sham Singh. Upon inquiries made from the said persons, Gora Singh disclosed that he had concealed 39 boxes of intoxicant drugs in the cavity underneath the back seat. Sham Singh disclosed that he had concealed 29 boxes of drugs in cavity in the front as well as rear door on the left side of the car. Accordingly, 66 boxes of Tramadol containing 33,000 tablets of Tramadol were recovered for which the said persons could not produce any license.

3. The learned counsel for the petitioner has submitted that the petitioner has falsely been implicated in the present case and that there is no credible evidence to connect him with the alleged recovery. It has been submitted that neither any personal search of the accused was effected nor any offer under Section 50 of the NDPS Act was given to them and that violation of Section 50 of the NDPS Act would be fatal to the case of the prosecution. It has further been submitted that since the Directors of the company which had manufactured the drugs in question have not been made a party, the case of the prosecution cannot survive and as such, the petitioner who has been

behind bars since the last about 1 year and 9 months deserves the concession of bail.

4. Learned counsel for the petitioner has further submitted that the entire complaint is based mainly on statement of the accused recorded in terms of Section 67 of the NDPS Act, whereas such statements have been held to be inadmissible as per the reference answered by Hon'ble Supreme Court in Tofan Singh Vs. State of Tamil Nadu, (2021) 4 SCC 1 [Criminal Appeal No.152 of 2013 decided on 29.10.2020].
5. On the other hand, the learned State counsel has submitted that it is a case of recovery of 'commercial quantity' of contraband from accused for which the petitioner could not furnish any explanation and as such, the offences under NDPS Act stand duly established. It has further been submitted that since it is not a case of recovery from personal search, therefore, no offer in terms of Section 50 of the NDPS Act was required to be extended to the accused and omission to extend such offer would not constitute any illegality. Learned State counsel has vehemently opposed the petition on the ground that the statements of the accused recorded under the provisions of Section 67 of the NDPS Act cannot be absolutely discarded particularly when the same found corroboration from other evidence collected during the course of investigation. The learned State counsel has further submitted that since it is the accused who had been caught red handed at the spot, therefore, they cannot escape from their liability whether or not any supplier or manufacturer is arrayed as a co-accused. The learned State counsel has, thus, prayed for dismissal of the petition.
6. I have considered rival submissions addressed before this Court.

7. It is a case where pursuant to receipt of secret information, two persons i.e. Gora Singh (petitioner) and Sham Singh were caught red handed while in possession of huge quantity of contraband i.e. 33000 tablets of Tramadol. No justification as regards possession of the said tablets by the petitioner is forthcoming. As far as Section 50 of the NDPS Act is concerned, it is not a case of recovery from the person of any of the accused and as such Section 50 of the NDPS Act would not be attracted by any stretch of imagination. Thus, omission to extend any offer to the accused in terms of Section 50 of the NDPS Act would not affect the case of prosecution in any manner. Hon'ble Supreme Court in a recent judgment dated 11.12.2021 delivered in Criminal Appeal No.1605 of 2021 titled as Kallu Khan versus State of Haryana has authoritatively held that Section 50 of the NDPS Act is applicable only in case of personal search and not in case of search of vehicle.
8. As far as the proposition of law in respect of statements recorded in terms of Section 67 of the NDPS Act is concerned, the Hon'ble Supreme Court in Tofan Singh's case has set at rest the controversy addressed while holding as under:

“155. We answer the reference by stating:

- (i) That the officers who are invested with powers under section 53 of the NDPS Act are “police officers” within the meaning of section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act.

- (ii) That a statement recorded under section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act.”

9. The ratio of the aforesaid judgment is very clear to the effect that any confessional statement in terms of Section 67 of the NDPS Act would be hit by provisions of Section 25 of the Evidence Act. However, the position may be slightly different if pursuant to any such statement some recovery is also effected and in which case it would be governed by provisions of Section 27 of the Evidence Act. It will not be out of place to mention here that recently this Court in Abhijeet Singh Vs. Narcotics Control Bureau, Chandigarh, 2021 (3) RCR (Criminal) 285 pertaining to a matter regarding grant of bail in a case registered under the NDPS Act, wherein also Tofan Singh's case (supra) had been cited, observed that while judgment in Tofan Singh's case (supra) was rendered on 29.10.2020, earlier the legal position regarding admissibility was considered in light ratio of two earlier decisions of Supreme Court i.e. Raj Kumar Karwal Vs. Union of India, (1990) 2 SCC 409 and Kanhaiyalal Vs. Union of India, (2008) 4 SCC 668, as per which such statements were admissible. The said bail application was ultimately dismissed, mainly on the ground that case was not solely based on statements under Section 67 of the NDPS Act, but there was other evidence to establish factum of recovery of contraband.
10. In view of the discussion made above, the involvement of the petitioner is clearly evident. There is nothing on record to show that in case released on bail, he would not indulge in similar offence again. Even otherwise, the recovered quantity of contraband which falls in the category of ‘commercial

quantity' would attract fetters imposed by Section 37 of the Act in the matter for grant of bail. Hon'ble Apex Court in a recent judgment i.e. 2020(1) RCR(Criminal) 818 State of Kerala vs. Rajesh Kumar has reiterated the legal position as regards the limitations imposed by Section 37 of the Act and has further held that a liberal approach in matters of bail in offences under NDPS Act is uncalled for. There is nothing on record at this stage from which it could be inferred that the petitioner is not guilty of the offence in question.

11. The petition is found to be sans merit and is hereby dismissed.

23.12.2021

kamal

**(Gurvinder Singh Gill)
Judge**

Whether speaking /reasoned
Whether Reportable

Yes / No
Yes / No