

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-18650-2021

Date of Decision: 14.07.2021

Sumit @ Lala

....Petitioner(s)

Versus

State of Haryana

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Shailender Kashyap, Advocate for
Mr. Parshant Sethi, Advocate for petitioner.

Mr. Naveen Singh Panwar, Deputy Advocate General, Haryana.

Through Video Conferencing

JASGURPREET SINGH PURI, J. (Oral)

The present petition has been filed under Section 439 of Code of Criminal Procedure for grant of regular bail to the petitioner in FIR No.03 dated 06.01.2021, under Section 22(c) of Narcotic Drugs and Psychotropic Substances Act, 1985 (Section 27-A NDPS Act, 1985 added later on), registered at Police Station Hisar Civil Lines, District Hisar.

Reply by way of an affidavit of Rajbir Singh, Deputy Superintendent of Police, Hisar-I, Hisar has been filed by way of email since the matter is being taken up through video conferencing. A print out of the same is taken on record.

As per the allegations contained in the FIR vide Annexure P-1 the police was informed by a secret informer that one Aman son of Joginder Prasad, resident of 232, 6 Kalka Ji, Mithepur, Southern Delhi, presently resident of House No.14, Durga Colony, Hisar is present in his car, silver coloured, Hyundai I-20

No.HR-26CL-4034 at PLA Market Hisar, having intoxicant tablets and if raid is conducted immediately, the abovesaid person can be apprehended. Necessary information was made under Section 42 of the NDPS Act and the aforesaid accused was apprehended along with the vehicle and thereafter the process under Section 50 of the NDPS Act was initiated and search was made and from his possession 76000 of tablets of Tramadol were recovered.

The learned counsel for the petitioner has submitted that the petitioner was not involved in the present case and in fact the present case was planted upon the petitioner as he was not named in the FIR and it was only on the basis of disclosure statement of the co-accused namely Aman that his name has been nominated. The learned counsel submitted that disclosure statement is a weak piece of evidence and, therefore, he may be considered for the grant of regular bail. He has submitted that the petitioner is in custody since 10.01.2021 and challan has been presented in the month of April, 2021 but the charges have not been framed and since the investigation of the case is already completed, he may be considered for the grant of regular bail especially considering the custody of the petitioner as well. The learned counsel further relied upon the disclosure statements of the aforesaid Aman and one other person namely Vinod and has stated that there are material discrepancies between the two statements of the aforesaid Aman and with that of aforesaid Vinod.

On the other hand, Mr. Naveen Singh Panwar, learned Deputy Advocate General, Haryana while referring to affidavit of Deputy Superintendent of Police, Hisar-I, Hisar has submitted that it is a case where the petitioner had supplied to the other accused namely Aman the tablets and had taken money for that purpose and that is why the petitioner's name was nominated and provisions of Section 27A of the NDPS Act were also added while presenting the challan.

He submitted that during the investigation when the co-accused Aman was

arrested and from his possession, mobile phone was recovered and also got the place of occurrence identified from the accused i.e. the place from where he purchased the said tablets in question and since the aforesaid Aman was produced before the learned Magistrate a four days police remand was granted and on interrogation it was disclosed by Aman that in the year 2018 he was working on the post of Manager in Rusan Pharma and Mahabir Pharmaceuticals was their distributor, where he met the petitioner namely Sumit alias Lala son of Satyanarayan, resident of Hari Nagar, Dadri. It was also disclosed by the accused Aman that petitioner used to bring narcotics from Delhi and used to sell them. Furthermore, during the disclosure statement it was also disclosed by the accused Aman that he used to call petitioner from his mobile No.8397891011 to the mobile No.8708235728 of the petitioner and ask him for supply of narcotic tablets in pursuance of which the petitioner provided him with a total of 152 packets of Tramadol Hydrochloride containing 76000 tablets, each measuring 100 mg and against the purchase of said tablets, accused Aman transferred an amount of Rs.90,000/- through various transactions by way of google pay from mobile No.8397891011 to 9729048023 on the asking of the petitioner (i.e. account statement of Vinod but in the account of Suman, mobile number of Vinod is mentioned in the bank account and, therefore, for this reason the name of Suman is showing in the account statement) and the petitioner delivered the said tablets in two cardboard boxes to accused Aman at Auto Market, Hisar and remaining amount of Rs.60,000/- was paid by accused Aman in cash to the petitioner on the spot i.e. at the Auto Market, Hisar. It was also disclosed by the accused Aman that on 06.01.2021 he was going to deliver the said tablets to one Vinay alias Mama but on the way he was apprehended by the police. On 10.01.2021 as per the disclosure statement of accused Aman, the petitioner was arrested and Section 27A of the NDPS Act was added in the present case and two

days police remand was granted by the learned Magistrate. During interrogation it was disclosed by the petitioner that he had purchased the tablets from one Santosh Parshad, resident of Uttam Nagar, Delhi and against the said purchase he transferred the money in the account of Santosh Parshad in his account bearing No.919010044755832 by way of different transactions and a copy of statement has also been attached as Annexure R-3 along with the present reply filed by the State and on 13.07.2021 the petitioner was sent to judicial custody. Furthermore, during the course of investigation it has come to the knowledge that accused Aman through Vinod transferred money to the petitioner and an amount of Rs.25,000/- (out of Rs.90,000/-) was also transferred to the petitioner from his friend Arvind Grewal's mobile No.9996102770. The police also collected the KAF id of mobile No.8397891011, 8950194924 of accused Aman and mobile No.8708235728, 9992005988 of petitioner which pertains to them while the investigating agency collected Call details of mobile No.8708235728 from the bare perusal of which it revealed that the accused Aman, petitioner and accused Santosh Parshad were continuously in touch with each other two three days prior to the date of occurrence.

The learned State counsel has also submitted that the arguments raised by the learned counsel for the petitioner that since the petitioner has been named on the basis of disclosure statement and that he should be granted bail cannot be sustained in view of the fact that there are other sufficient material available on record to connect the petitioner with the alleged offence. He submitted that the transfer of money by way of google pay in the account of the petitioner and also the matching of the phone numbers would show that the petitioner was actively involved in the present offence. He further submitted that the petitioner is a habitual offender and earlier also there are two FIRs under the NDPS Act in which petitioner is an accused and he is facing trial. The learned

State counsel referred to para No.9 of the reply, in which the details of the FIRs have been mentioned i.e. FIR No.181 dated 10.05.2018 under Sections 22B/61/85 of the NDPS Act, registered at Police Station City Dadri and the petitioner is under trial and another FIR No.493 dated 05.01.2018, under Section 21/22/29/61/85 of the NDPS Act, registered at Police Station Urban Estate, Rohtak and the same is also under trial and now the present case has been tried by the Court of learned Sessions Judge, Hisar and is fixed for hearing for framing of charge on 16.07.2021. The learned State counsel further submitted that the petitioner is involved in other cases and as such, he is likely to commit an offence in future. The learned State counsel further submitted that the prayer of the petitioner for the grant of regular bail is hit by the bar contained under Section 37 of the NDPS Act. He submitted the total recovery was 76000 tablets of Tramadol Hydrochloride and the total weight of the recovered contraband comes to 26 Kg. which is much more than even the commercial quantity. He further submitted that the petitioner has been charged with Section 27A of the NDPS Act and, therefore, because of this reason also the prayer of the petitioner for grant of bail is hit by the bar contained under Section 37 of the NDPS Act. He further submitted that there is no ground available to the petitioner for seeking a departure from the bar under Section 37 of the NDPS Act.

I have heard the learned counsel for the parties.

In the present case the petitioner is in custody since 10.01.2021 and the challan stands presented and the matter is now fixed for consideration for framing of charges. The petitioner has been charged with offence under Section 27A of the NDPS Act and the recovered quantity of contraband was of commercial quantity under the Schedule of the NDPS Act. Ex facie the bar contained under Section 37 of the NDPS Act would be attracted in the present case. A departure can be made from Section 37 of the NDPS Act only when the

petitioner is able to satisfy the Court that there are sufficient grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail. As per the affidavit filed by the State there are other materials also available apart from the disclosure statement for the purpose of connecting the petitioner with the alleged offence. Furthermore, the petitioner is also involved in two other cases of NDPS Act. There is nothing to believe at this stage that the petitioner would not commit such kind of offence again and, therefore, there is weight in the arguments raised by the learned State counsel. Learned counsel for the petitioner has not been able to satisfy this Court as to how departure can be made from the bar contained under Section 37 of the NDPS Act.

Consequently, as no ground is made out to interfere in the present case, the present petition is hereby dismissed.

However, anything observed hereinabove shall not be treated as an expression of opinion on the merits of the case and is meant for the purpose of deciding the present petition only.

14.07.2021

rakesh

(JASGURPREET SINGH PURI)
JUDGE

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