

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-24849-2020

Date of Decision: 22.04.2021

Jacky Garg

....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Janak Singh Bhinder, Advocate, for the petitioner.

Mr. Randhir Thind, DAG, Punjab.

Through Video Conferencing

JASGURPREET SINGH PURI, J. (Oral)

The present petition has been filed under Section 439 of Criminal Procedure Code for grant of regular bail in FIR No.255 dated 08.10.2018 under Section 21/61/85 Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Bhawanigarh, District Sangrur, Punjab. As per the FIR the police party received some information that some suspicious persons were coming from main road towards Nidampur at about 05:00 p.m. and when they reached near the Fauji Dhaba they saw three persons sitting near a motorcycle and on seeing the police party these persons got perplexed and tried to run away. They were apprehended with the help of fellow officials. Some injections were clearly visible in the polythene bag kept on the seat of black colored motorcycle and name and address of the apprehended persons were asked. Out of which one told his name to be Jacky Garg son of Balwinder Kumar (Petitioner) and the second person and the third person also told their

names. Since the injections were visible in the polythene bag kept on the seat of the motorcycle, they were counted and they came to be 47 injections of Buprenorphine Injection and 47 injections of Promethazine Hydrochloride Injections Phenergan of 25 mg/ml. Thereafter, even one injection and syringe was found from the pocket of the petitioner also.

The learned counsel for the petitioner has submitted that the petitioner is in custody since 08.10.2018, which is about two and a half years and the prosecution evidence in the present case is already complete. However, the trial of the case for defence could not commence because of the Covid-19 epidemic situation prevailing in the State of Punjab. He has submitted that the petitioner is not involved in any other case and he has been falsely implicated in the present case and considering the custody of the petitioner that he may be granted the concession of regular bail. The learned counsel further submitted that the provisions of Section 50 of the NDPS Act were not complied with in the present case particularly in view of the fact that even if though assumingly it was a case of a commercial recovery still one injection and syringe was recovered from the pocket of the petitioner and, therefore, the provisions of Section 50 of the NDPS Act ought to have been complied with.

On the other hand, Mr. Randhir Thind, learned Deputy Advocate General, Punjab has submitted that it is correct that the petitioner is in custody since 08.10.2018, which is about two and a half years. Entire prosecution evidence is complete and matter is pending for defence evidence. He has also not disputed that the petitioner is not involved in any other case. However, he has opposed the grant of bail on the ground that the recovery was of commercial quantity and, therefore, hit by the bar of Section 37 of the NDPS Act.

I have heard the learned counsel for the parties.

The custody period of the petitioner is not in dispute. It is also not in dispute that the petitioner is not involved in any other case. It is also not disputed that the prosecution evidence in the present case is already complete and the matter is now pending for defence evidence. The State of Punjab is facing the Covid-19 epidemic these days. However, it will be necessary to consider the bar contained under Section 37 of the NDPS Act. The learned counsel for the petitioner has submitted that since there was a recovery from the person of the petitioner also, therefore, the provisions of Section 50 of the NDPS Act ought to have been complied with. On the other hand, learned State counsel has submitted that since it was a case of chance recovery, there was no necessity to comply with the provisions of Section 50 of the NDPS Act. Therefore, this becomes a debatable issue particularly in view of the fact that as per the FIR itself it has been stated that the injection was recovered from the pocket of the petitioner and it is also an admitted position that no Gazetted Officer etc. was called.

Furthermore, it is not the case of the State that in case the petitioner is released on bail then he may tamper with any evidence or he may influence any witness or may flee from justice particularly in view of the fact that the petitioner is not involved in any other case. Although, the recovered quantity from three persons was commercial in nature but considering the facts and circumstances of the present case where part recovery was effected from the person of the petitioner and the provisions of Section 50 of the NDPS Act were not complied with, certainly departure can be made from the bar contained under Section 37 of the NDPS Act, at this stage.

Therefore, without commenting on the merit of the case and

considering the totality of circumstances in the present case, the present petition is allowed. The petitioner shall be released on regular bail subject to furnishing bail bonds/surety to the satisfaction of the learned trial Court/Duty Magistrate.

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

22.04.2021
rakesh

(JASGURPREET SINGH PURI)
JUDGE

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