

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

CRM-M-25291 of 2020.

Decided on:- January 14, 2021.

Sher Singh.

.....Petitioner.

Versus

State of Haryana.

.....Respondent.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Sandeep S. Majithia, Advocate
for the petitioner.

Ms. Gaganpreet Kaur, A.A.G., Haryana.

HARI PAL VERMA, J. (Oral)

The matter has been taken up for hearing through video conferencing due to outbreak of COVID-19.

The petitioner has filed this petition under Section 439 Cr.P.C. for grant of regular bail in FIR No.64 dated 21.05.2020 under Sections 21 and 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, the NDPS Act) registered at Police Station Panjokhra, District Ambala.

Briefly stated, the aforesaid FIR was registered against the petitioner with the allegations that on 21.05.2020 when the police party headed by SI Dinesh Chander was on patrolling duty at T-Point, Chhajju Majra Chowk, Ambala-Naraingarh Road, the petitioner was apprehended on the basis of secret information. 25 pouches (each pouch containing 100 Microlit tablets) i.e. total 2500 Microlit tablets and 34 pouches (each pouch containing 60 Lomotill tablets) i.e. total 2040 Lomotill tablets were recovered from the possession of the petitioner. The total weight of the tablets was

found to be 322.4 grams. The proceedings under Sections 42, 50, 52 and 57 of the NDPS Act were conducted and the Drugs Control Officer was also called at the spot. As per the report prepared by the Drugs Control Officer, the tablets recovered from the petitioner contained the salt “Diphenoxylate HCL”, which is a psychotropic substance under the NDPS Act.

Learned counsel for the petitioner has submitted that the petitioner has been falsely implicated in the case. No independent witness was joined by the investigating officer during the procedure of search. Further, no proper notice as envisaged under Section 50 of the NDPS Act was served upon the petitioner. The offer was made to the petitioner as to whether he wants to get his search conducted by any senior police officer or Magistrate, whereas the offer ought to have been made as to whether the petitioner wants to get his search conducted by any gazetted officer or Magistrate.

He has further submitted that the petitioner is behind the bars since 21.05.2020. Challan in the case has already been presented and no recovery is to be effected from the petitioner. Further, the conclusion of trial is likely to take sufficient long time.

Learned State counsel has argued that the total weight of the tablets recovered from the petitioner was found to be 322.4 grams, which falls within the category of commercial quantity. Therefore, the petitioner is not entitled to be released on bail.

I have heard learned counsel for the parties.

Perusal of the copy of notice served upon the petitioner under Section 50 of the NDPS Act shows that though the police has made an offer to the petitioner to get his search conducted from a senior police officer or a

Magistrate, but the petitioner in his reply had submitted that he wanted to get his search conducted from a gazetted officer. Accordingly, the police had got his search conducted from Naib Tehsildar, Shahzadpur, which is apparent from the bare perusal of the notice itself as it has been signed by Naib Tehsildar, Shahzadpur. Therefore, the contention of learned counsel for the petitioner that no proper notice under Section 50 of the NDPS Act was served upon the petitioner, is not sustainable particularly when the search was conducted from a Naib Tehsildar, who, of course, is a gazetted officer.

Further, the contention of learned counsel for the petitioner that no independent witness was joined in the investigation is a matter which is yet to be adjudicated during the course of trial.

Considering the nature of allegations levelled against the petitioner and the huge recovery of narcotic substance recovered from him, which falls in commercial quantity, this Court does not find any reason to admit the petitioner on bail.

The present petition is, accordingly, dismissed.

The observations made hereinabove shall not be construed as an expression of opinion on the merits of the case and the trial Court shall decide the case without being influenced with these observations in any manner.

January 14, 2021
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No