

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

CRM-M-33662-2020 (O&M)
Date of Decision:- 22.11.2021

Harvinder Singh ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. K.S.Virk, Advocate for the petitioner.

Mr. Rajiv Sidhu, DAG, Haryana
assisted by ASI Krishan.

(proceedings conducted through video conferencing)

GURVINDER SINGH GILL, J.

1. The petitioner seeks grant of regular bail in a case registered vide FIR No. 24 dated 22.2.2020 under Sections 15A, 21C, 22C, 29, 61, 85 of the NDPS Act at Police Station Guhla, District Kaithal.
2. The FIR in question was lodged on the basis of secret information received by the police to the effect that Harvinder Singh sells 'poppy husk' and in case a raid is conducted heavy quantity of 'poppy husk' can be recovered from the store in the house of Harvinder Singh. Upon receipt of said information, the police proceeded to the house of Harvinder Singh and saw a boy coming out of the store who was carrying two green coloured polythene bags in his right hand and one green coloured polythene bag in his left hand and who upon noticing the police party threw away the said polythene bags and tried to run away. However, the said boy was apprehended. Brown coloured substance was noticed scattered on the floor from one of the

polythene bags which had been thrown by aforesaid Harvinder Singh. The said substance was found to be 'poppy husk'. Upon checking another polythene bag thrown by Harvinder Singh, the same was found to contain 1110 tablets of 'Tramadol Hydrochloride' and 1390 tablets of 'Alprozolam'. The third polythene bag was also found to contain 'poppy husk'. Upon enquiry, the boy who had been apprehended disclosed his name as Harvinder Singh. When he was asked about the contents of the two polythene bags which contained brown coloured substance, Harvinder Singh disclosed that one polythene bag contained 'poppy husk' and the other contained intoxicant chemical powder. Upon weighment of 'poppy husk', the same was found to weigh 800 grams. The intoxicant chemical powder was found to weigh about 7 kilograms. The weight of 1110 tablets of 'Tramadol Hydrochloride' was found to be 440 grams and of 1390 tablets of 'Alprozolam' was found to be 165 grams.

3. The learned counsel for the petitioner has submitted that the petitioner has falsely been implicated in the instant case and that the falsity of the case would be evident from the fact that there is disparity in the weight of the contraband which is alleged to have been recovered and the weight of the contraband as has been found as per report of the FSL. The learned counsel, in this regard has submitted that while as per FIR, the 'Tramadol Hydrochloride' recovered was found to weigh 440 grams but when the weight of the same is calculated as per the average weight of a tablet, the same works out to 457 grams. It has further been submitted that similarly while the weight of 1390 tablets of 'Alprozolam' was found to be 165.4 grams but when the same is worked out in accordance with weight of the

tablet, as recorded in the report of FSL, the same is found to be 168.19 grams.

4. The learned counsel has further submitted that a perusal of various documents including the Arrest Memo and Case Property Transfer Memo, the date underneath the signatures of ASI Jagdeep Singh is printed as 22.2.2020 whereas the FIR is lodged on 21.2.2020. It has further been submitted that the fact that the FIR number has been written by hand in an empty space though the rest of the contents are typed also cast a doubt on the case of prosecution.
5. On the other hand, the learned State counsel has submitted that it is a case of recovery of 'commercial quantity' of contraband and that minor inconsistency in the weightment would not demolish the case of the prosecution. The learned State counsel has further submitted that the inconsistency regarding date on the Arrest Memo was on account of inadvertent mistake and that the petitioner cannot take much advantage from the same.
6. I have considered rival submissions addressed before this Court.
7. It is a case where the petitioner was caught red handed from his residence while in possession of three different types of contrabands out of which the contraband 'Tramadol Hydrochloride' and 'Alprazolam' were found to be falling in the quantity of 'commercial quantity'. Though, it is correct that there is some inconsistency in the weight, as has been mentioned in the FIR and the weight which is worked out on the basis of finding of the FSL, but the said difference is not a huge difference and is a minor difference and the same can safely be attributed to a difference in calibration of the weighing

scales. As regards, the mention of incorrect date in the Arrest Memo, the said aspect has to be considered in context of all other documents and if there are some other documents which show that the accused was indeed apprehended on 22.2.2020, then some inconsistency in recording of date will not matter and could well be on account of a genuine inadvertent error. Still further, the fact that the number of the FIR had been written in hand on some of the documents which are otherwise printed can also not be helpful to the petitioner at this stage as it is quite common that the FIR number is sometimes conveyed a little late at the spot where accused is apprehended whereas the police officer present at the spot would start doing the paper work even before receipt of the FIR number. As such, this Court does not find any weight in the contentions raised before this Court.

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

22.11.2021

kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned
Whether Reportable

Yes / No
Yes / No