

225 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.42047 of 2021 (O&M)
Date of Decision:13.10.2021

Umesh Kumar

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Yashpal Thakur, Advocate
for the petitioner.

Ms. Monika Jalota, D.A.G. Punjab.

AVNEESH JHINGAN, J. (ORAL)

This is the second petition filed for grant of regular bail in case of FIR No.95 dated 01.04.2019 under Section 20 of NDPS Act, 1985 registered at Police Station Model Town, District Hoshiarpur, Punjab.

The earlier bail filed by the petitioner was dismissed as withdrawn with liberty to file afresh with better particulars.

The brief facts of the case are that the police on secret information on 01.04.2019, apprehended the petitioner from his room. There was recovery of 7 quintal and 14 KG of intoxicating substance.

The counsel for the petitioner submits that the seized substance was actually a raw material for preparation of Ayurvedic medicines. It was a kind of muneka (dried grapes). He further argues that there was non-

compliance of Section 42 of the NDPS Act (for short 'the Act') and therefore, the entire proceedings have been vitiated. The reliance is placed upon the bill/invoice issued by the M/s Shree Bholey Traders, Canal Road, Kanpur, U.P. Dated 30.03.2019 (Annexure P-4) for 1728 packets of Ayurvedic Aushidhi.

Learned State Counsel on instructions, from ASI- Jagtar Singh, opposes the grant of bail. The contention is that ruqa was sent on receipt of information, Section 42 was complied with. She relies upon the report (Annexure P-5) and states that as per the report it was a mixture which included cannabinoids, charas, and tetrahydrocannabinol. She submits that the bill/invoice relied upon by the petitioner has seen the day light for the first time. The bill/invoice with regard to Ayurvedic medicines for 1728 packets whereas the recovery was from 14 bags. She further submits that the petitioner is neither a practising ayurvedic doctor nor having any such qualification.

The contention of the counsel for the petitioner that the seized substance was not covered under NDPS, falls on its face in view of the FSL report. The contention that there was non-compliance of Section 42 of the Act, is a debatable issue as in view of statement of the State counsel.

The Supreme Court in its judgment titled as “ ***Union of India through Narcotics Control Bureau, Lucknow vs. Md. Nawaz Khan***” Criminal Appeal No. 1043 of 2021 (arising out of SLP (Crl) No. 1771 of 2021) has held that the compliance of Section 42 of the Act should be raised during the course of the trial.

The quantity recovered from the petitioner is commercial

therefore, rigor of Section 37 of the Act fully applies in the present case.

No ground is made out for grant of regular bail.

Dismissed.

October 13, 2021

(AVNEESH JHINGAN)

JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No