

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

Sr. No.205

CRM-M-39883-2020

DATE OF DECISION: March 24, 2021

ASHOK KUMAR

..PETITIONER

VERSUS

STATE OF HARYANA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Suvir Sidhu, Advocate, for the petitioner.

Mr. Narender Singh Behgal, AAG, Haryana..

SUDHIR MITTAL, J. (ORAL)

The petitioner was arrested on 26.09.2019 as allegedly recovery of 1190 tablets of tramadol was effected from a white coloured polythene being carried by him while riding a motorcycle. FIR No.236 of even date was registered at Police Station Ellenabad, District Sirsa, under Section 22 of the NDPS Act, 1985. A perusal of the said FIR shows that the petitioner was found sitting on a motorcycle in front of electricity board.

Vide order dated 14.10.2020, the petitioner was granted bail till receipt of report of the FSL. However, he was not released as FSL report was on the record and a wrong statement had been made by the learned State counsel. Consequently, the present petition has been filed for grant of regular bail.

Learned counsel for the petitioner submits that the petitioner has been in custody for almost 01 year and 06 months. The trial is not likely to be concluded at an early date as only 04 PWs out of a total of 13 PWs have been examined till date. There is no other case pending/decided against the petitioner. Thus, it is contended that in case the petitioner is released on regular bail, he is not likely to commit any offence. Further, this is a case of false implication and this is apparent from the fact that the Gazetted Officer in whose presence the alleged recovery was effected is one Naib Tehsildar Sh. Kulwant Singh with whom the petitioner had an altercation a few days before the date of his arrest. The sequence of events also shows that it is a case of false implication. Recovery was effected from the private conveyance i.e. motorcycle of the petitioner and thus, Section 42 of the NDPS Act, 1985 (hereinafter referred to as the Act) is attracted. Search and seizure was conducted on receipt of secret information and accordingly, in view of the mandate of Section 42 of the Act, the said information should have been reduced into writing and should have been sent to a Superior Officer immediately. The seizure memo annexed with the challan shows that recovery was effected at 4.40 pm on 26.09.2019 and ruqa was sent at 5.10 pm and thereafter, the petitioner was shown as arrested at 7.30 pm. Instead, ruqa should have been sent immediately on receipt of secret information. Reliance has been placed upon a Division Bench judgment dated 07.05.2019 passed in CRA-D-624-DB-2017 titled as '*Surmukh Singh vs. State of Punjab*'.

Learned State counsel does not dispute that the petitioner has been in custody for almost 01 year and 06 months and that there is no other case pending against him. He also does not dispute that 09 more PWs remain to be examined. His only submission is that commercial quantity of contraband has been recovered and thus, unless and until the petitioner is able to show that he is likely to be acquitted, he cannot be granted regular bail. Acquittal is unlikely in this case as Section 43 of the Act is attracted and not Section 42 of the Act as has been argued by learned counsel for the petitioner. Recovery was effected in a public place i.e. in front of electricity board where the petitioner was found sitting on a motorcycle. Accordingly, there was no necessity of reducing the secret information into writing and sending a ruqa to the police station before carrying out the search and seizure. The procedure adopted by the police was in accordance with the law as immediately on receipt of secret information, the raid was conducted and the recovery was effected at 4.40 pm. The ruqa was sent at 5.10 pm whereupon another police official came at the spot and prepared a site plan etc. and officially recorded the arrest at 7.30 pm.

In a case of recovery of commercial quantity of contraband, the twin conditions laid down by Section 37 of the Act have to be satisfied before such an accused can be granted regular bail. These conditions are:

- (a) that in the facts and circumstances of a particular case, he is likely to be acquitted;*
- (b) he is not likely to commit any offence while on regular bail.*

So far as the second condition is concerned, keeping in view the fact that there is no other criminal case pending/decided against the petitioner, it can be concluded that the petitioner is not likely to commit any other offence while on bail. The crucial issue, however, is whether he is likely to be acquitted. The answer to this question hinges upon whether the recovery was effected from a private conveyance or from a public place. Section 42 of the Act applies where entry, search, seizure and arrest is to be effected from any building, conveyance or enclosed place. Section 43 applies where seizure and arrest is to be effected from a public place. Under the said provision, there is no requirement of reducing the secret information into writing and sending a ruqa before proceeding to effect seizure and arrest. It has been so laid down authoritatively in *Ravindran @ John vs. The Superintendent of Customs*, 2007 (3) RCR Criminal 80. In the instant case, the secret information obtained was that the petitioner is selling intoxicating tablets outside the electricity board. On reaching the spot, the petitioner was in fact found sitting on his motorcycle outside the electricity board and thus, it is evident that the seizure and arrest was made in a public place. Merely because he was sitting on his motorcycle it cannot be said that the seizure and arrest was made from an enclosed place and it is only in such a situation that Section 42 of the Act is attracted. Thus, I am unable to return a finding that the petitioner is likely to be acquitted and accordingly, regular bail cannot be granted to him. The Division Bench judgment in *Surmukh Singh's case (supra)* is not attracted in the instant case.

In view of the above, the petition is dismissed. The trial Court is, however, directed to conclude the trial expeditiously.

Nothing stated hereinabove shall be construed as an opinion on the merits of the case and the trial Court is strictly warned not to refer to any part of this order or to draw any inferences therefrom while concluding the trial.

March 24, 2021
Ankur

(SUDHIR MITTAL)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes