

CRM-M No.43279 of 2020

Date of decision: 07.04.2021

Gagandeep Singh @ Gagna

.... Petitioner

Versus

State of Punjab

.... Respondent

Coram: Hon'ble Mr. Justice B.S. Walia

Present : Mr. Amit Goyal, Advocate for the petitioner.
Mr. Dhruv Dayal, Sr. DAG, Punjab.

B.S. Walia, J. (VC)

1. Case is being taken up for hearing through Video Conferencing due to Covid-19 pandemic.
2. This is the second petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case FIR No.42 dated 31.05.2020, registered under Sections 22 and 29, NDPS Act, 1985 at Police Station Thulliwal, District Barnala, Punjab.
3. Learned counsel for the petitioner contends that the first petition i.e. CRM-M No.18774 of 2020 was disposed of by grant of interim bail till receipt of report of FSL and pursuant to the receipt of report of the FSL, the petitioner surrendered and thereafter filed petition for regular bail, which was dismissed by the learned Judge, Special Court, Barnala vide order dated 04.12.2020, by taking into account the quantity of 750 tablets recovered from co-accused Lakhi Singh, as also 200 loose intoxicants tablets recovered from the petitioner,

thereby, working out the total quantity of the *clonazepam* salt to be 170 gm 38 mg i.e. more than the commercial quantity of 100 grams.

4. Learned counsel relies upon the decision of Hon'ble the Supreme Court in '*Amarsingh Ramjibhai Barot* versus *State of Gujarat*', 2005(7) SCC 550, to contend that when 02 accused are found together carrying contraband, the quantity of contraband carried by both the accused cannot be added to bring it within the ambit of commercial quantity.

5. Learned counsel contends that where the contraband recovered from 02 accused found together, cannot be added together, for working out commercial quantity then in the instant case, the petitioner's case is on better footing since the petitioner was apprehended on the disclosure statement of co-accused Lakhi Singh and thereafter 200 loose tablets of *clonazepam* were recovered from him.

6. Learned counsel contends that in the circumstances, the total salt of *clonazepam* salt of 200 tablets recovered from the petitioner would work out to 36.04 grams, which is much less than the commercial quantity of 100 grams, as specified in the schedule to the NDPS Act.

7. Learned Sr. DAG, Punjab, on instructions from *ASI Gurtej Singh*, concedes that in view of the decision of Hon'ble the Supreme Court in *Amarsingh Ramjibhai Barot's* case (*supra*), 200 loose tablets of *clonazepam* recovered from the petitioner on the basis of disclosure statement of co-accused Lakhi Singh cannot be clubbed with the recovery of 750 tablets of *clonazepam* from co-accused Lakhi Singh, so as to work out commercial quantity on the basis of combined recovery and that in

the circumstances, the total weight of salt of 200 loose tablets of *clonazepam* recovered from the petitioner works out to merely 36.04 grams, which is less than the commercial quantity of 100 grams in respect thereto.

8. Learned State Counsel further confirms that the petitioner has been in custody since 03.06.2020, challan in the case has been presented, charges have been framed but out of 15 prosecution witnesses, no prosecution witness has been examined, besides the petitioner is not involved in any other case.

9. Taking into account the aforementioned aspects of the matter, especially that recovery of 200 tablets of *clonazepam* from the petitioner cannot be clubbed with the recovery of 750 tablets of *clonazepam* from co-accused Lakhi Singh in view of decision of Hon'ble the Supreme Court in 'Amarsingh Ramjibhai Barot's case (*supra*), consequently, total weight of 200 loose tablets of *clonazepam* recovered from the petitioner works out to only 36.04 grams, besides charges have been framed and out of 15 prosecution witnesses, not even a single one has been examined, trial is likely to take considerable period of time, the petitioner is not involved in any other case, no useful purpose would be served by keeping the petitioner in custody, accordingly, the petition for regular bail is **allowed** and the petitioner is ordered to be released on bail pending trial subject to his furnishing bail bonds / surety to the satisfaction of the learned trial Court / Ilqa Magistrate / CJM / Duty Magistrate, concerned provided he is not required in any other case. The

petitioner shall also comply with the conditions contained in Section 437

(3) CrPC. However, nothing stated hereinabove shall be construed to be an expression of opinion on the merits of the case.

(B.S. Walia)
Judge

April 07, 2021
'Rajneesh/Amit'

Whether speaking/reasoned: Yes/No.
Whether reportable : Yes/No.