

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

CRM-M-44066-2020 (O&M)
Date of Decision:- 23.11.2021

Rakesh Bhardwaj ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Vivek Aggarwal, Advocate for the petitioner.

Mr. Ajay Pal Singh, DAG, Punjab,
assisted by ASI Sukhwinder Singh.

GURVINDER SINGH GILL, J.

1. The petitioner seeks grant of regular bail in a case registered vide FIR No.332 dated 21.11.2020 under Section 22(C) of the NDPS Act at Police Station Mandi Gobindgarh, District Fatehgarh Sahib.
2. As per the case of prosecution, on 21.11.2020, when a police party was present in the area of T-point service road, Abomajra, Gobindgarh, then a person was seen coming who was carrying a bag pack on his back. However, the said person, upon noticing the police party tried to turn back but was apprehended by the police. Upon inquiry, he disclosed his name as Rakesh Bhardwaj. A search of the bag yielded recovery of 1100 capsules of 'PARVON SPAS' which upon chemical analysis were found to contain 'Dextropropoxyphen'.
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 in several of the documents i.e. Consent Memo, Recovery Memo etc., the number of the FIR has been filled in hand whereas rest of the body of said documents is printed with the help of computer. It has further been submitted that since there is no independent witness to the occurrence, the case of the prosecution cannot be taken to be gospel truth and as such, the petitioner deserves the concession of bail.

4. Opposing the petition, the learned State counsel has submitted that since the petitioner was caught red handed at the spot while in possession of a 'commercial quantity' of contraband, no case for grant of bail is made out.
5. I have considered rival submissions addressed before this Court.
6. The case of the prosecution is specific to the effect that on 21.11.2020, the petitioner was found in possession of 1100 capsules of 'PARVON SPAS' which upon chemical analysis were found to contain 'Dextropropoxyphen'. The quantity recovered falls in the category of 'commercial quantity'. Though, the learned counsel for the petitioner has submitted that the case of the prosecution is rendered doubtful on account of the number of the FIR having been filled in with hand on the Consent Memo and other documents whereas the body writing is in printed form but the said fact cannot cast any doubt on the case of the prosecution inasmuch as the police officials/recovery officer would start the writing work immediately when any offer is extended and by that time, the FIR would not have been registered and its number would not have been conveyed to the recovery Officer. As such, the factum of the FIR number being written in hand on the printed consent memo would not be of much consequence. Further, the absence of an independent witness is a matter which has to be considered in

light of the other evidence which would be led by the prosecution and at this stage mere absence of an independent witness cannot be construed to opine that the petitioner has been falsely implicated. There is nothing on record to show that the petitioner in case released on bail would not indulge in similar offences again.

7. 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.
8. The Trial Court may make a schedule in advance for recording prosecution evidence and fix 4 or 5 dates in advance or even more during the next fortnight and after examining the list of witnesses, the unexamined PWs be summoned by allocating different dates for their presence. Summons for all the dates fixed in advance be issued in one go and their service be duly monitored. The Superintendent of Police concerned may also be requested for rendering assistance for securing presence of the remaining PWs.

23.11.2021

kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned
Whether Reportable

Yes / No
Yes / No