

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

CRM-M-47806-2019 (O&M)
Date of Decision:- 26.8.2021

Gurminder Singh @ Bhinder

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. J.S.Thakur, Advocate for the petitioner.

Mr. Ajay Pal Singh Gill, DAG, Punjab
assisted by SI Ajmer Lal.

(proceedings conducted through video conferencing)

GURVINDER SINGH GILL, J.

1. The petitioner seeks grant of regular bail in a case registered vide FIR No.80 dated 9.4.2019 under Section 22 of the NDPS Act, 1985 at Police Station Rama Mandi, District Jalandhar.
2. As per the case of prosecution, on 9.4.2019 when a police party headed by ASI Mulakh Raj was patrolling near the area of Khazi Mandi Chowk then a person was noticed coming from the side of Railway Godown on foot and who upon noticing the police party got perplexed and threw a polythene bag which he was carrying on the road and turned back and started moving swiftly. The said person was apprehended by the police on the basis of suspicion. Upon enquiry, he disclosed his name as Gurwinder Singh @ Bhinder. The polythene bag thrown by the aforesaid person was checked

and was found to contain 20 injections of Rexogesic (Buprenorphine) of 2 ML each, apart from 20 injections of Avil 10 ML each.

3. The learned counsel for the petitioner has submitted that the petitioner has falsely been implicated in the instant case and that since neither any independent witness was associated at the time of effecting recovery and nor the provisions of Section 50 of NDPS Act were complied with, therefore, the entire recoveries stand vitiated. On one of the previous dates, an argument had also been raised on behalf of the petitioner that it is only the active ingredient of the recovered contraband which is to be taken into account for ascertaining as to whether the same would fall within the category of 'commercial quantity' or 'non-commercial quantity' and that since the recovered injections of Rexogesic (Buprenorphine) contained .26 milligrams per milliliter and consequently, each vial of 2 ML contained .52 milligrams of the active ingredient, the total recovered quantity would work out to be less than the quantity prescribed as 'commercial quantity'. The aforesaid contention had been raised while relying upon a judgment of this Court rendered in Rajvir Singh @ Raju Vs. State of Punjab, CRM-M-35080-2018 (decided on 21.8.2018), as has also been recorded in order dated 13.2.2020.
4. The learned counsel for the petitioner has further submitted that in any case as per Rule 66 of the NDPS Rules, an individual may possess upto 100 dosage units at a time for his personal medical use, and that the recovered quantity is much less than 100 dosage units as permitted under Rule 66 of the NDPS Rules.
5. On the other hand, the learned State counsel has opposed the petition on the ground that it is a case of chance recovery where provisions of Section 50 of

NDPS Act were not required to be complied with and that the recovery in the instant case, in any case, cannot be said to have been effected from personal search so as to cast any obligation on the recovery officer to extend any offer in terms of Section 50 of NDPS Act. The learned State counsel further submits that it is the entire weight of the recovered contraband which has to be taken into account and not just the active ingredient. The learned State counsel has further submitted that since the petitioner could not furnish any document to justify possession of the contraband much less any prescription of doctor to show that it was for his personal medical use, therefore, he cannot avail any benefit of Rule 66 of NDPS Rules.

6. I have considered rival submissions addressed before this Court.
7. It is a case of chance recovery wherein the police came across the petitioner during the course of patrolling. The petitioner came to be arrested on the basis of suspicion when he tried to turn back on noticing the police party and threw a polythene bag which he was carrying on the ground. Although, no offer in terms of Section 50 of NDPS Act seems to have been extended but in the instant case, the recovery cannot be said to have been effected from personal search of the petitioner as the recovery was effected from a polythene bag which the accused had thrown on the ground. In these circumstances, Section 50 of NDPS Act would not have any application in the instant case. As far as the contention of the petitioner regarding taking into account only the active ingredient of the recovered contraband is concerned, the said matter is no longer *res-integra* and has been authoritatively settled by Hon'ble Supreme Court in 2020(2) RCR(Criminal) 523, Hira Singh and another vs. Union of India wherein it has been held that

in case of seizure of a mixture of Narcotic Drugs or Psychotropic Substances with one or more neutral substance(s), the quantity of neutral substance(s) is not to be excluded and to be taken into consideration along with actual content by weight of the offending drug, while determining the "small or commercial quantity" of the Narcotic Drugs or Psychotropic Substances.

8. Coming to the contention of the petitioner as regards Section 66 of NDPS Rules that the recovered 20 injections of Buprenorphine are within the permissible limits which is 100 injections, this Court is unable to accept the aforesaid contention inasmuch as the petitioner could not show anything to the effect that the same was for their personal medical use. This Court in 2018(5) RCR (Criminal) 883 - Sarbjit Singh @ Sabbi Vs. State of Punjab while adjudicating on the aforesaid issue pertaining to Rule 66 of the NDPS Rules, turned down the contention of the accused that Rule 66 of the NDPS Rules would confer some kind of immunity to the accused in case, the recovered injections are less than 100 in number. The relevant extract from the said judgment reads as follows:-

“29. This Section 37 of the Act neither exempted any of the provisions of the Act nor excepted any of the provisions of the Rules , rather, it applies secularly to all the provisions of the Act and the Rules , unless the conditions imposed therein have been fulfilled. The two conditions laid down under Section 37 (ibid) authorise a court to take lenient view with regard to grant of bail but those have no concern with Rule 66 of the Rules . Even if it is so provided under the first proviso of sub rule 2 of Rule 66 (ibid), neither this Court shall presume that petitioner is not guilty of such an offence nor there is reasonable ground for believing so.

30. From this angle, this Court is of the view that if a person keeps commercial quantity of the psychotropic substance falling under the schedule, he is not entitled to the benefit of Section 37 of the Act irrespective of the provisions contained in Rule 66 of the Rules.”

9. 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 of grant of bail. Hon’ble Apex Court in a recent judgement 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.

26.8.2021

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(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No