

**IN THE HIGH COURT FOR THE STATES OF PUNJAB & HARYANA
AT CHANDIGARH**

CRM-M- 52773 -2019(O&M)
Date of Decision : 06.01.2021

Manpreet SinghPetitioner

Versus

State of PunjabRespondent

CORAM : Hon'ble Mr. Justice Gurvinder Singh Gill

Present: Ms. Manpreet Ghuman, Advocate, counsel for the Petitioner.
Mr. Ajay Pal Singh Gill, Deputy Advocate General, Punjab for
State of Punjab.

(Proceedings conducted through video conferencing)

* * * * *

Gurvinder Singh Gill, J.

1. The petitioner seeks grant of regular bail in a case registered against him vide FIR No. 78 dated 4.4.2019, at Police Station: City Moga, District Moga, under Section 22 of the NDPS Act, 1985 (hereinafter referred to as 'the Act').
2. The case of prosecution is that on 4.4.2019, when ASI Malkit Singh along with other police officials was conducting checking of vehicles during days of election, then at about 8:50 PM two clean shaven boys who were riding a black coloured motorcycle were signaled to stop but the said boys instead of stopping tried to turn back the motorcycle. However, the police was able to nab the said boys. Upon enquiry, the driver of the motorcycle

disclosed his name as Anil Goyal while the pillion rider disclosed his name as Manpreet Singh (petitioner). Since a black coloured bag was lying on the thighs of Anil Goyal, an offer in terms of Section 50 of the Act was extended to him. Since Manpreet Singh (petitioner) was also found to be carrying a black coloured envelope in his hand, he was also extended an offer in terms of Section 50 of the Act. As they opted to be searched in presence of a gazetted officer, DSP Paramjit Singh was requested to come to the spot. Upon his arrival, search of both the aforesaid persons was conducted in his presence. While the bag lying on the thighs of Anil Goyal was found to contain 2500 intoxicating tablets, the envelope carried by the petitioner Manpreet Singh was found to contain 1400 intoxicating tablets. Later, upon chemical examination, the tablets were found to contain 'Tramadol' which is listed at serial No. 30 in the list of psychotropic substances.

3. The learned counsel for petitioner has submitted that he has falsely been implicated in the present case and that the recovery has been foisted upon him as would be evident from the fact that there is no independent witness to the alleged recovery of contraband. It has further been submitted that the very fact that gazetted officer of police department was called would cast serious doubt on the veracity of the case of the prosecution. It has also been submitted that since the son of the petitioner is mentally challenged and the petitioner as on date has been behind bars since the last more than one year and 9 months, the petitioner deserves to be released on bail .
4. Opposing the petition, the learned State counsel has submitted that it is a case where all the safeguards required to be taken under the Act before effecting recovery of contraband had been duly adhered to and since it is a

case of recovery of 'commercial quantity' of contraband, no case for grant of bail is made out .

5. I have considered rival submissions addressed before this Court. It is a case where the petitioner was apprehended at the spot while in possession of intoxicating tablets which upon chemical analysis were found to contain a psychotropic substance namely 'Tramadol Hydrochloride'. The mandatory provisions of Section 50 of the Act have been duly complied with inasmuch as an offer of being searched in the presence of a gazette officer or a Magistrate was duly extended to the petitioner and who opted to be searched in the presence of a Gazetted officer, pursuant to which DSP Paramjit Singh was called at the spot and in whose presence the search was effected. The mere fact that the gazetted officer belonged to police department would not vitiate the recovery in any manner since he had come to the spot in discharge of his official duties and had no axe to grind against the petitioner.
6. Even if it is taken that the petitioner cannot be attributed conscious possession of the contraband being carried by the co-accused Anil Goyal, still the weight of the 1400 tablets which were being carried by the petitioner works out to 555.8 gms which falls in the category of 'commercial quantity'. As such, the fetters imposed by Section 37 of the Act in the matter of grant of bail, would get attracted. 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 or that the petitioner, if released on bail, will not indulge in similar offences again. The petition is found to be sans merit and is hereby dismissed.

06.01.2021
(*kamal*)

(GURVINDER SINGH GILL)
JUDGE

Whether reasoned / speaking? **Yes / No**

Whether reportable? **Yes / No**