

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

206

**CRM-M-2306-2022(O&M)
Date of decision: 08.04.2022**

DINESH KUMAR ALIAS DINU

....Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present : Mr. Hitesh Verma, Advocate
for the petitioner.

Mr. Karanbir Singh, AAG Punjab.

VINOD S. BHARDWAJ. J. (ORAL)

The instant petition has been filed under Section 439 CrPC for grant of regular bail to the petitioner in case FIR No.165 dated 16.09.2021 under Sections 22 and 27 of the NDPS Act registered at Police Station City 2, Mansa, District Mansa.

Learned counsel for the petitioner vehemently argues that the recovery in question is shrouded by suspicious circumstances. He has drawn the attention of the Court to the documents viz. recovery memo, information memo as well as personal search memo to contend that the FIR number has been mentioned in the said documents. He submits that since it was a case of chance recovery, the very fact that the FIR number finds mention in the said documents, discredits the recovery itself. A supplementary argument is also advanced by the counsel to contend that the recovered contraband is 2000 ML and therefore, without a valid conversion formula, it cannot be ascertained at this stage that the

same weighs more than 01 kg. He further argues that only 01 vial was sent and the analysis result thereof cannot be generalized as a proof of the entire recovery.

Mr. Karanbir Singh, AAG Punjab has opposed the prayer to contend that the said aspects are required to be examined at the stage of trial.

I have considered the arguments advanced by the parties.

Insofar as first argument of the petitioner is concerned, he has placed reliance upon the judgment of the Hon'ble Supreme Court in the matter of **Kamaljit Singh @ Pappu Vs. State of Punjab** decided on 31.01.2019 in Criminal Appeal No.424 of 2009. The relevant extract is reproduced as under:-

7. Indeed, Manjit Singh (PW 2) had received information telephonically and had passed on the same to his contemporary who recorded the FIR but the fact remains that he himself investigated the case. The unfairness in investigation becomes more glaring when we peruse the search and seizure panchanamas. It is seen that the FIR number has been noted at the top of these panchanamas. It is unfathomable as to how the FIR number could be noted on the search and seizure panchanamas when the same were drawn up obviously at an earlier point in time and preceded the registration of the FIR. Even this discrepancy has not been explained by the prosecution at all. Furthermore, we find that the FIR has been registered by Nirmaljit Singh but he has not been examined by the prosecution and no explanation is offered in this regard as well.

Upon consideration of the said judgment, I am of the opinion that same would not be applicable to the facts of the case. The recovery has not been disbelieved on account of the FIR number having been mentioned on the memos but on account of inability of the prosecution witnesses to explain the same. The circumstances under which the FIR number got to be recorded in the recovery

memo and other documents is a matter of evidence. The said explanation, if any, has to be offered by the prosecution witnesses when they will stand the test of cross-examination. A recovery cannot be held vitiated only on this ground. There can always be a possibility where sufficient space is left by the Investigating Officer at the top of the page to fill-in the details of the case as and when the FIR is registered so that the various memos do not get mixed up by mistake or by negligence.

Insofar as second argument of the petitioner as regards the conversion of the contraband into grams/kilograms is concerned, learned counsel has not been able to refer to any material on the basis whereof it can be said that the quantity of 2000 ML, as recovered, would not fall in the commercial quantity and that upon application of universal conversion formula, the weight of the contraband shall be less than the commercial quantity.

While dealing with the third argument as to the sample having been sent of only one vial and the same cannot be generalized as a representative sample, it is not the pleaded case of the prosecution that the vials were of different batch numbers and/or by different manufacturers. In the absence of any such averment having been made by the petitioner, it cannot be assumed at this stage that the vials, so seized, belong to different batch numbers or by different manufacturers and that the analysis of the samples so done would not be applicable to the entire recovery effected.

The recovery in question is a commercial quantity. The case still is at initial stages. The petitioner was taken in custody on 16.09.2021 and it cannot be contended that the trial has been unduly delayed. Learned counsel for the petitioner could not point to any illegality in the search, seizure and recovery of the contraband.

Finding no merit, the instant petition is dismissed.

The observation made hereinabove shall not be construed as an expression on the merits of the case and the Trial Court shall decide the case on the basis of available material.

(VINOD S. BHARDWAJ)
JUDGE

April 08, 2022
S.Sharma(syr)

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>