

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

Criminal Misc. No.M-7992 of 2022(O&M)

Date of Decision: April 08, 2022

Arshad Saifi

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

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Present: - Mr.Parvinder Singh Ahluwalia, Advocate
for the petitioner.

Mr.V.G.Jauhar, Sr.DAG, Punjab.

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HARINDER SINGH SIDHU, J.

The petitioner has filed this petition under Section 482 Cr.P.C seeking to quash order dated 21.01.2022 (Annexure P-1) passed by Ld. Special Judge, Fatehgarh Sahib, whereby, sample in case FIR No.122 dated 23.09.2021 under Sections 22 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, Police Station Khamanu, District Fatehgarh Sahib, has been ordered to be sent for re-testing.

As per the prosecution version, 65000 intoxicant tablets labelled as 'Tramadol Hydrochloride 100 mg, Celcidal-100 SR Mfg Lic.No.MNB/07/0644 and MB/07/645 Batch No.21-B-T208 and Rs.4 lacs drug money was recovered from the petitioner. Later, during investigation, on the basis of statement of petitioner, co-accused Vineet Kumar was arrested and from his possession 5000 tablets of Tramadol Hydrochloride were recovered. The tablets recovered from both the accused were duly

Magistrate, where sample parcels were drawn from the bulk parcels. The samples were sent for examination to Forensic Science Laboratory, Mohali. Vide reports of FSL dated 08.01.2022, the samples taken from both the accused were found to be containing 'Chlorpheniramine Maleate'.

As 'Chlorpheniramine Maleate' does not fall under the preview of NDPS Act, the prosecution suspected the authenticity/reliability of the report of FSL and moved an application for re-sampling/re-testing of other samples lying in the Judicial Malkhana, Fatehgarh Sahib. The said application was allowed vide the impugned order. Hence, this petition.

Ld. counsel for the petitioner has, inter-alia, argued that there is no provision under the NDPS Act for re-testing of sample; the Investigating Agency has not stated any exceptional circumstances for retesting; nor there is any allegation regarding tampering of sample on the part of the Chemical Examiner. The application was moved by the prosecution only for the reason that there is contradiction in the alleged salt mentioned on the recovered tablets and the salt found by the FSL on examination of the samples. It is argued that the purpose of sending the recovered contraband to the FSL is to verify the contents of the alleged recovery and not to punish a person only on the basis of labelled contents.

I have heard Ld. counsel for the parties and perused the paper-book.

The Ld. Trial Court after considering all the above submissions and the case law, concluded :

“5. In the case at hand, the prosecution has a serious suspicion that when on the tablets recovered from the possession of both the accused, the name of the salt of the

*medicine is specifically printed as 'Tramadol Hydrochloride', how can the tablets be found to be containing 'Chlorpheniramine Maleate', which does not fall under NDPS Act. Therefore, in order to rule out any possibility of tempering, on the part of chemical examiner, the present application has been moved. The Hon'ble High Court in the case titled as **Sandeep Kaur vs. State of Punjab, Criminal Miscellaneous No.M-22002 of 2012 (O&M)**, in similar circumstances allowed retesting of the second sample parcel lying deposited in the judicial custody. In view of the ratio of the above mentioned judgment and considering the totality of circumstances and the fact that the application for retesting of the second sample has been moved within 15 days of the first report of FSL, this court is of the considered opinion that in order to secure the ends of justice and to help the court in arriving at the truth, the present application deserves to be allowed.”*

In the facts and circumstances of the case, there appears to be no illegality in the impugned order.

Dismissed.

April 08, 2022

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(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No