

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

216

CRM-M-12117 of 2022 (O&M)

DECIDED ON: 18th May, 2022

Vinod Kumar

.....PETITIONER

VERSUS

State of Haryana

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Mr. Jivesh Malik, Advocate for petitioner.

Ms. Geeta Sharma, DAG Haryana.

AVNEESH JHINGAN, J (ORAL)

This is a petition seeking regular bail in case of FIR No.222 dated 15.5.2021, under Sections 22 (c) of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act') and Section 420 IPC, registered at Police Station Civil Line, Kaithal.

The brief facts are that the police party on 15.5.2021 acting upon a secret information raided the house, where Vikram Singh along with petitioner (Vinod Kumar) were present and 207 tablets of Addnok-N^{NRX} Buprenorphine 2 mg and Naloxone 0.5 mg total weight 22.77 grams which falls in commercial quantity, 22 bottles of Pheniramine Maleate Inj. I.P.N-Vil injection (Veterinary use only for intramuscular injection only) 100 mls, 53 bottles of Pheniramine Maleate Inj. I.P.N. Vil Injection (Veterinary use only for intramuscular injection), 22 bottles of Pheniramine Maleate Inj. I.P.N-Vil injection were recovered.

During investigation, it revealed that petitioner was associated with a Chemist Shop and concoction of veterinary medicine with Narcotic Substances was being prepared and sold. A decoy customer was sent and

hereafter raid was conducted. The recovery was of commercial quantity.

Learned counsel for the petitioner submits that it is a case of false implication as no independent witness was joined. There is non-compliance of Section 50 of the Act. He further relies upon the fact that there is discrepancy with regard to sample numbers, as mentioned in the Magistrate order and in the FSL report. He submits that no sample was numbered as 2A&2B whereas actual sample numbers were 1A&1B and 2.

Learned State counsel vehemently opposes the prayer and submits that the recovery is of commercial quantity. The secret information was received which was found reliable, a decoy customer sent and thereafter raid was conducted.

This Court while dealing with bail matter desists to make observations on merits but on insistence of learned counsel for petitioner, the contentions are being dealt with. The observations made hereinafter are only for the purpose of deciding the present petition and shall not be construed as an expression on merits of the case.

There is no dispute that the petitioner was apprehended from the house where recovery of commercial quantity of Narcotic Substances was made. The fact of non-joining an independent witness would be subject matter of trial. It cannot be held at this stage that mere non-joining of an independent witness in itself would prove fatal for the case of the prosecution.

The issue regarding non-compliance of Section 50 of the Act would be subject matter of trial.

Supreme Court in ***State of Punjab Versus Baldev Singh***, Criminal

"54. (5) That whether or not the safeguards provided in Section 50 have been duly observed would have to be determined by the Court on the basis of evidence led at the trial. Finding on that issue, one way or the other, would be relevant for recording an order of conviction or acquittal. Without giving an opportunity to the prosecution to establish, at the trial, that the provisions of Section 50, and particularly the safeguards provided therein were duly complied with, it would not be permissible to cut short a criminal trial."

Suffice-to-say, that the recovery was made from the house and not from the conscious possession, hence Section 50 of the Act would not be applicable.

The discrepancy as pointed out by learned counsel for the petitioner in mentioning of sample number in the order of Magistrate and in the FSL report, needs no comment at this stage. The evidence has to be adduced as to whether there is a discrepancy and what would be its affect.

The Act is a self-contained statute, for dealing with Narcotic Substance.

Section 37 of the Act provides stringent provision for grant of bail, where recovery is of commercial quantity.

Section 37 is reproduced:

"37. Offences to be cognizable and non-bailable.

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail."

Under Section 37 of the Act the twin conditions are required to be fulfilled for grant of bail where recovery is of commercial quantity. In the present case, *prima facie*, no case is made out to fulfill the first condition.

It would not be out of place to mention here that the allegations are not of merely dealing in Narcotic Substance but the petitioner was using/rather misusing his knowledge about medicine for preparing concoction of Narcotic Substances by mixing the intoxicants with medicine meant for veterinary use.

No case is made out for grant of bail.

Dismissed.

Since the main case has been decided, the pending application, if any is rendered infructuous.

(AVNEESH JHINGAN)
JUDGE

18th May, 2022

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Whether speaking/reasoned Yes
Whether reportable Yes