

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-22355-2022
Date of decision : 27.05.2022

Sher Singh

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Navneet Singh, Advocate
for the petitioner.

Mr.Munish Sharma, AAG, Haryana.

VIKAS BAHL, J.(ORAL)

This is a second regular bail petition under Section 439 Cr.P.C. with a prayer for releasing the petitioner on regular bail in FIR no.64 dated 21.05.2020 registered under Section 21/22 of the Narcotic Drugs and Psychotropic Substances, Act, 1985 (in short “NDPS Act”) at Police Station Panjokhra, District Ambala.

A perusal of the file would show that the petitioner had earlier filed bail application, i.e. CRM-M-25291-2020 and the same was dismissed by a coordinate Bench of this Court by passing a detailed order dated 14.01.2021. The relevant part of the said is reproduced hereinbelow:-

“Briefly stated, the aforesaid FIR was registered against the petitioner with the allegations that on 21.05.2020 when the police party headed by SI Dinesh Chander was on patrolling duty at T-Point, Chhajju Majra Chowk, Ambala-Naraingarh Road, the petitioner was apprehended on the basis of secret information. 25 pouches (each pouch containing 100 Microlit tablets) i.e. total

2500 Microlit tablets and 34 pouches (each pouch containing 60 Lomotill tablets) i.e. total 2040 Lomotill tablets were recovered from the possession of the petitioner. The total weight of the tablets was found to be 322.4 grams. The proceedings under Sections 42, 50, 52 and 57 of the NDPS Act were conducted and the Drugs Control Officer was also called at the spot. As per the report prepared by the Drugs Control Officer, the tablets recovered from the petitioner contained the salt "Diphenoxylate HCL", which is a psychotropic substance under the NDPS Act.

Learned counsel for the petitioner has submitted that the petitioner has been falsely implicated in the case. No independent witness was joined by the investigating officer during the procedure of search. Further, no proper notice as envisaged under Section 50 of the NDPS Act was served upon the petitioner. The offer was made to the petitioner as to whether he wants to get his search conducted by any senior police officer or Magistrate, whereas the offer ought to have been made as to whether the petitioner wants to get his search conducted by any gazetted officer or Magistrate.

He has further submitted that the petitioner is behind the bars since 21.05.2020. Challan in the case has already been presented and no recovery is to be effected from the petitioner. Further, the conclusion of trial is likely to take sufficient long time.

Learned State counsel has argued that the total weight of the tablets recovered from the petitioner was found to be 322.4 grams, which falls within the category of commercial quantity. Therefore, the petitioner is not entitled to be released on bail.

I have heard learned counsel for the parties.

Perusal of the copy of notice served upon the petitioner under Section 50 of the NDPS Act shows that though the police has

made an offer to the petitioner to get his search conducted from a senior police officer or a Magistrate, but the petitioner in his reply had submitted that he wanted to get his search conducted from a gazetted officer. Accordingly, the police had got his search conducted from Naib Tehsildar, Shahzadpur, which is apparent from the bare perusal of the notice itself as it has been signed by Naib Tehsildar, Shahzadpur. Therefore, the contention of learned counsel for the petitioner that no proper notice under Section 50 of the NDPS Act was served upon the petitioner, is not sustainable particularly when the search was conducted from a Naib Tehsildar, who, of course, is a gazetted officer.

Further, the contention of learned counsel for the petitioner that no independent witness was joined in the investigation is a matter which is yet to be adjudicated during the course of trial.

Considering the nature of allegations levelled against the petitioner and the huge recovery of narcotic substance recovered from him, which falls in commercial quantity, this Court does not find any reason to admit the petitioner on bail.

The present petition is, accordingly, dismissed.

The observations made hereinabove shall not be construed as an expression of opinion on the merits of the case and the trial Court shall decide the case without being influenced with these observations in any manner.

January 14, 2021

*(HARI PAL VERMA)
JUDGE"*

No argument on merit has been raised by learned counsel for the petitioner other than the arguments which have already been rejected vide the above order passed by the coordinate Bench of this Court. With the present petition, no zimni order has been annexed to show that the trial is

counsel has pointed out that out of 15 prosecution witnesses, 5 witnesses have been examined. The recovery from the present petition is of 2500 Microlit tablets and 2040 Lomotill tablets and the total weight is 322.4 grams of the said tablets which contain diphenoxylate HCL, which is a psychotropic substance under the NDPS Act and is above the commercial quantity as the commercial quantity of the same starts from 50 grams. Since the quantity involved in the present case is of commercial quantity, thus, the bar under Section 37 of the NDPS Act would apply.

Accordingly, the present petition is dismissed. However, keeping in view the custody of the present petitioner, the trial Court is directed to expedite the trial.

Nothing stated above shall be construed as an expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

(VIKAS BAHL)
JUDGE

May 27, 2022
Davinder Kumar

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No