

(220) IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-30815-2022
Date of Decision: 11.10.2022

SANDEEP SINGH

... Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Sandeep Kumar Passi, Advocate
for the petitioner.

Mr. Kirat Singh Sidhu, D.A.G, Punjab.

JASJIT SINGH BEDI, J.

This 2nd petition has been filed under Section 439 Cr.P.C. for the grant of regular bail in case bearing FIR No.201 dated 21.11.2021 registered under Sections 22(c) of the NDPS, 1985 with Police Station Kotwali Bathinda, District Bathinda, Punjab.

2. The brief facts of the case are that while the police party was on patrolling duty, two persons were seen sitting in the backside of a car and checking one carton. When the car was stopped on suspicion and searched after following the relevant procedures under the NDPS Act, the recovery of 12500 tablets of contraband was effected from the carton in the vehicle which was subsequently known to be *Clovidol*.

3. The learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case. In fact, he was a wholesale chemist running a shop in the name and style of M/s Sandeep

Pharma at Street No.3-D, Partap Nagar, Bathinda, District Bathinda and having a valid licence. The recovery memo was not signed by the petitioner which amounted to non-compliance of the mandatory provisions as observed in the case of **Sandeep Kumar Versus State of Punjab, 2019(4) RCR (Criminal) 741**. There was violation of Section 50 NDPS Act and other mandatory provisions of the Act and since the petitioner has been in custody since 21.11.2021, he ought to be granted the concession of bail.

4. On the other hand, the learned State counsel contends that this is the second bail application of the petitioner and there is absolutely no change in circumstances after his first application was dismissed as withdrawn vide order dated 09.03.2022 passed in CRM-M-4548-2022 (Annexure P-6). He contends that in terms of the judgment of the Hon'ble Supreme Court in the case of **State of Rajasthan Versus Teja Ram, 1999(2) R.C.R. (Criminal) 285**, there is no requirement of the recovery memo to be signed by the accused. Merely because the petitioner was a chemist did not give him the authority to keep the contraband for sale in his vehicle, as in terms of the licence issued to the petitioner, the sale of medicines/drugs is to be conducted from a particular location/shop alone. *Prima facie* a perusal of the FIR itself showed that there was due compliance of the mandatory provisions of the Act. Even otherwise, the violations if any would be a matter of adjudication during the course of trial and cannot be examined at the stage of adjudication of a bail application.

5. I have heard the learned counsel for the parties at considerable length.

6. Admittedly, this is the second bail application of the petitioner and there is absolutely no change in circumstances between the withdrawal of the first application and the filing of the present one. The recovery of a commercial quantity of contraband has been effected from the petitioner and he has not been able to *prima facie* establish that he had the necessary permission to transport the said contraband. In fact that is not even his case. The case of the petitioner is merely that he has been falsely implicated in the present case. Whether there has been a violation of the mandatory provisions of the Act or whether the recovery memo was to be signed by the petitioner would be a matter of adjudication at the stage of trial.

7. For the purposes of adjudication of the present bail application, the aforementioned facts would have little relevance, moreso, in view of the bar contained under Section 37 NDPS Act.

8. In view of the above, I find no merit in the present petition and therefore the same is hereby dismissed.

(JASJIT SINGH BEDI)
JUDGE

11.10.2022

JITESH

Whether speaking/reasoned:- Yes/No
Whether reportable:- Yes/No