

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

CRM-M-34855-2021 (O&M)
Date of Decision:- 11.1.2022

Balwinder Kumar @ Sonu

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Ranjit Singh Ghuman, Advocate for the petitioner.

Mr. Ajay Pal Singh Gill, DAG, Punjab
assisted by ASI Parvinderjit Singh.

(proceedings conducted through video conferencing)

GURVINDER SINGH GILL, J.

1. The petitioner seeks grant of regular bail in a case registered vide FIR No. 65 dated 25.6.2021 under Section 22 of the NDPS Act, 1985 at Police Station Sadar Banga, District SBS Nagar.
2. As per the case of prosecution on 25.6.2021 when a police party headed by ASI Gurdip Singh was patrolling in the area of Nawanshahr and was present in the outer '*phirni*' of village Rasulpur, then one person was noticed coming on foot who was holding a '*lifafa*' (paper envelope) in his right hand. The said person, upon noticing the police party, threw away the envelope and starting walking back briskly. The police party intercepted the said man who upon inquiry disclosed his name as Balwinder Kumar @ Sonu. The envelope thrown on the ground was found to be containing narcotic

injections. A *ruqa* was immediately sent through ASI Major Ram on the basis of which requisite DDR was recorded. SI Jasvir Singh reached at the spot. ASI Gurdip Singh apprised SI Jasvir Singh about the facts and produced the accused before him. SI Jasvir Singh introduced himself to the accused and checked the envelope thrown by him from which 12 intoxicating injections of 'Buprenorphine LEEGESIC' (2 ML each), apart from 12 injections of 'AVIL' (10 ML each) were recovered, which were taken into possession by the police.

3. The learned counsel for the petitioner has submitted that the petitioner has falsely been implicated in the present case and deserves the concession of bail on the following grounds :-

- i) that as per Rule 66 of the Narcotic Drugs and Psychotropic Substances Rules, 1985, a person is entitled to possess 100 injections of Buprenorphine and as such, possession of 12 injections of Buprenorphine will not attract any offence under the NDPS Act. The learned counsel in order to hammer forth his aforesaid submission has placed reliance upon judgments of this Court rendered in CRM-M-37530-2015 - Dr. Rajinder Singla vs. State of Punjab; CRM-M-38986-2018 – Nitin Rajput @ Raman Vs. State of Punjab and CRM-M-52372-2019 – Shiv Kumar @ Shis vs. State of Punjab.
- ii) that since the report of FSL was not filed alongwith the challan, therefore, the petitioner deserves the concession of bail as the challan cannot be said to be complete in the absence of report of FSL;

- iii) that the search of the petitioner by SI is in contravention of provisions of Section 50 of the NDPS Act inasmuch as a Sub-Inspector is neither a gazetted officer nor a Magistrate;
 - iv) that no offer in terms of Section 50 of the Act whatsoever was ever extended to the petitioner before effecting recovery and as such, the entire procedure being defective, the petitioner cannot be held liable in any manner; and
 - v) that no independent witness was ever associated at the time of effecting recovery and as such no sanctity can be attached to the alleged recovery of contraband.
4. Opposing the petition, the learned State counsel has submitted that the petitioner cannot seek any protection of Rule 66 of the NDPS Rules inasmuch as there is nothing to show that the recovered contraband was for medical use. It has further been submitted that report of FSL was prepared on 2.9.2021 and was received by the prosecution on 9.10.2021 whereas the challan was filed on 18.10.2021 and as such, the contention of the petitioner with regard to non-receipt of report of FSL is devoid of merit. It has further been submitted that it is a case of chance recovery from an envelope thrown by the accused on the ground and as such, there is no question of compliance of provisions of Section 50 of the Act or for association of any independent witness. It has also been informed that the petitioner has earlier been involved in two other cases i.e. one registered in the year 2013 and another in the year 2018.
5. I have considered rival submissions addressed before this Court.

6. It is not in dispute that the recovered contraband i.e. 12 vials of Buprenorphine (2 ML each) would fall in the category of ‘non-commercial quantity’. There is nothing on record to show that the contraband recovered from the petitioner was for his personal medical use. In any case, this Court in 2018(5) RCR (Criminal) 883 - Sarbjit Singh @ Sabbi Vs. State of Punjab while adjudicating on the aforesaid issue pertaining to Rule 66 of the NDPS Rules, turned down the contention of the accused that Rule 66 of the NDPS Rules would confer some kind of immunity to the accused in case, the recovered injections are less than 100 in number. The relevant extract from the said judgment reads as follows:-

“29. This Section 37 of the Act neither exempted any of the provisions of the Act nor excepted any of the provisions of the Rules , rather, it applies secularly to all the provisions of the Act and the Rules , unless the conditions imposed therein have been fulfilled. The two conditions laid down under Section 37 (ibid) authorise a court to take lenient view with regard to grant of bail but those have no concern with Rule 66 of the Rules . Even if it is so provided under the first proviso of sub rule 2 of Rule 66 (ibid), neither this Court shall presume that petitioner is not guilty of such an offence nor there is reasonable ground for believing so.

30. From this angle, this Court is of the view that if a person keeps commercial quantity of the psychotropic substance falling under the schedule, he is not entitled to the benefit of Section 37 of the Act irrespective of the provisions contained in Rule 66 of the Rules.”

7. In view of ratio of aforementioned judgment, the petitioner cannot take shield of Rule 66 of the NDPS Rules in any manner.

8. As far as contention (ii) as regards the challan not being accompanied by report of FSL is concerned, it has specifically been stated by learned State counsel before this Court that the report of FSL has duly been filed before the Trial Court. In any case, the petitioner could have capitalized on the factum of non-receipt of report of FSL by moving an appropriate application before the trial Court while contending that the challan has to be treated as incomplete or could have even moved an application for grant of interim bail. However, once report of FSL has already been submitted before the trial Court, such grounds are not available to the petitioner.
9. The contentions (iii) & (iv) as regards the search not having been effected by a gazetted officer or a Magistrate will not hold ground inasmuch as it is a case of a chance recovery and that too from an envelope which had been thrown on the ground by the petitioner and cannot be said to be a case of recovery pursuant to personal search of the accused so as to attract provisions of Section 50 of the NDPS Act.
10. The contention (v) as regards non-joining of an independent witness cannot be said to entitle the petitioner to grant of bail as there is no hard and fast rule that an independent witness is required to be associated in every case. Joining an independent witness is a rule of prudence only and not an absolute rule that the recovery must be witnessed by an independent person.
11. The recovered quantity of contraband which falls in the category of 'commercial quantity' would attract fetters imposed by Section 37 of the Act in the matter for grant of bail. Hon'ble Apex Court in a recent judgment i.e. 2020(1) RCR(Criminal) 818 State of Kerala vs. Rajesh Kumar has reiterated the legal position as regards the limitations imposed by Section 37 of the Act

and has further held that a liberal approach in matters of bail in offences under NDPS Act is uncalled for. There is nothing on record at this stage from which it could be inferred that the petitioner is not guilty of the offence in question or that in case released on bail he will not indulge in similar offences again.

12. The petition is found to be sans merit and is hereby dismissed.

11.1.2022

kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No