

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-36179-2022

Date of decision : 11.10.2022

Gurpreet Singh

..... Petitioner

versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Satnam Singh Gill, Advocate
for the petitioner.

Mr. Sarabjit Singh Cheema, DAG, Punjab.

PANKAJ JAIN, J. (Oral)

Present petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case bearing FIR No.144 dated 29.11.2021, registered for the offence punishable under Section 22 of the NDPA at Police Station Sadar Rajpura, District Patiala.

2. As per allegations, it has been stated that:-

“Copy of original ruqa. SHO, Police Station Sadar Rajpura, Jai Hind. I, ASI along with ASI Gursharan Singh 662, ASI Harish Kumar 1416 and HC Gurinder Jeet Singh 983 were riding Govt. vehicle bearing registration No.PB-65K-2442 being driven by ASI Karnail Singh with laptop and printer and were present at Jansua Road, near graveyard Jansua in connection with patrolling as well as in search of suspected persons and searching the passersby. At about 6.30 PM, one Sikh gentleman came from the side of Gharola road on motorcycle bearing registration No.PB-230-1063 make Hero Splendor. He on seeing the police party in front became perplex

and tried to turn back the motorcycle, the tyre of motorcycle slipped and the motorcycle fell down. I, ASI called above mentioned person and asked him to stop. The abovementioned Sikh gentleman took out a white coloured transparent polythene containing tablets from right pocket of his jacket and threw the same towards his right hand side. White coloured tablets were clearly seen from the envelope. I, ASI on the basis of suspicion and with the help of companions apprehended the abovementioned Sikh gentleman and asked his name and address. He disclosed his name as Gurpreet Singh son of Bhajan Singh, resident of village Alampur, Police Station Sadar Rajpura, District Patiala. Thereafter, I, ASI asked him about the transparent envelope thrown by him. Abovementioned Gurpreet Singh told that there were intoxicant tablets in transparent envelope. The description of above mentioned Gurpreet. Singh is aged about 23 years, height 5'6", kept hair on head, trimmed beard and a black mark on the back. I, ASI took out the intoxicant tablets from the above mentioned envelope and counted which came to be 1050 intoxicant white coloured loose tablets in numbers. I, ASI put the recovered intoxicant tablets in a plastic container and thereafter the plastic container in a white coloured cloth bag and converted into parcel. I, ASI served the abovementioned parcel with my seal bearing letters MS. Sample seal was prepared separately. After use, seal was handed over to ASI Gursharan Singh 662. The parcel containing the white coloured intoxicant tablets duly sealed with seal bearing letters MS along with abovementioned sample seal was taken into police possession through a separate recovery memo. Recovery memo of intoxicant tablets was signed by ASI Gursharan Singh

662 and ASI Harish Kumar 1416. Abovementioned Gurpreet Singh has committed offence under Section 22/61/85 NDPS Act by keeping in his possession 1050 white coloured intoxicant loose tablets. Therefore, ruqa is being sent to the police station Sadar Rajpura by hand through HC Gurinderjit Singh 983 for registration of case under said section against abovementioned Gurpreet Singh. After registration of case I may be intimated case number and special report be issued to the higher officers. I, ASI along with companions am busy in investigation at the spot. In the area of Jansua Road, near graveyard in village Jansua at 8.30 P.M. Latitude - 30.50984 Longitude 76.63844. Sd/- Malvinder Singh, ASI, City Wing, Patiala dated 29.11.2021.”

3. Counsel for the petitioner submits that the recovery effected from the petitioner is in form of loose tables. He submits that only 25 tablets were drawn out of the said 1050 tablets and thus the quantity of 1050 tablets cannot be read to hold that the petitioner was found in possession of commercial quantity. He further submits that as per the case of the prosecution, on seeing the police party, the petitioner threw away the bag and thus the fact as to whether the petitioner was in conscious possession of the said contraband will be a debatable question. He relies upon the judgment passed by the Apex Court in '*Gaunter Edwin Kircher vs. State of Goa, Secretariat Panji, Goa*' reported as *1993(3) SCC 145* and the judgment passed by this Court in CRM-M-906-2020, titled as '*Jorawar Singh vs. State of Punjab*'.
4. I have heard counsel for the petitioner and have gone through the records of the case.

5. Homogeneity is an essence of sampling. The principle to assess the quality of a substance by drawing sample out of homogenous quantity is age old. Once it is found that whole of the substance is homogenous, the qualitative analysis thereof can be well carried out by carrying out analysis of a sample drawn out of such substance. The result of such analysis can well be used as indicative of the nature and the quality of the rest of the substance. Such analysis by drawing out random sample is a well recognized principle.

6. It is not disputed that as per the record, the sample was drawn out of total quantity of 1050 tablets. Such sample was drawn at random and there was no heterogeneous element available in the contraband recovered which can lead to the inference that the test on such sample will not be indicative of the substance contained in whole of the contraband. Thus, the submission made by counsel for the petitioner w.r.t. wrong sampling or to say that the sampling of 25 tables cannot hold the petitioner guilty of having in possession of commercial quantity deserves rejection.

7. So far as second plea of the petitioner w.r.t. the petitioner having thrown away the bags and thus not being in conscious possession of the contraband, is fallacious and the same deserves rejection as well.

8. In view of the fact that the petitioner has been alleged to be in possession of commercial quantity of contraband and rigorous of Section 37 will be applicable to the present case, no ground for grant of regular bail is made out.

9. Consequently, the present petition is dismissed.

10. Needless to say nothing recorded herein shall be construed
to be an expression of an opinion on the merits of the case.

(PANKAJ JAIN)
JUDGE

11.10.2022
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No