

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

CRM-M-44209-2022

Date of decision : 28.09.2022

Gulshan Kumar @ Monu

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Davinder Bir Singh, Advocate and
Mr. Amritpal Singh Gill, Advocate
for the petitioner.

Mr. Arun Gupta, Asstt. Advocate General, Punjab
ASI Nishan Singh.

PANKAJ JAIN, J. (ORAL)

This petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case FIR No.114 dated 27th of July, 2017 registered for the offence punishable under Section 22 of the Narcotic Durgs and Psychotropic Substances Act, 1985 (for short, 'the Act'), at Police Station Bhogpur, District Jalandhar Rural.

2. Ld. Counsel for the petitioner submits that the present case was registered on the basis of secret information. In order to substantiate his contention he relies upon contents of FIR which read as under :-

“SHO Police station Bhogpur, Jai Hind. Today myself ASI along with Head Constable Rajinder Kumar No. 653, Head Constable Kamaljeet Singh 438, CT. Amandeep 1215, PHG Jaspal Singh No. 27253 were in private vehicle and were

patrolling in connection with bad elements at T-point Adampur Mor, Bhogpur. That a secret informer came present and informed that Gulshan Kumar @ Monu R/o Ludhiana is indulged in the business of intoxicant tablets and capsules. Today, he is roaming in the area of Adda Kala Bakra carrying intoxicant tablets and capsule and huge quantity and is searching for the customers to sell. If a raid is conducted at Kala Bakra Adda, then Gulshan Kumar @ Monu can be apprehended red handed with huge quantity of intoxicants tablets and capsules. The information is trustworthy and from reliable resources. On this the offence under Section 22, 61, 85 of NDPS Act has been disclosed. Therefore, a ruka is sent to the police station through constable Amandeep No.1215 for registration of the case. A case be registered and number be intimated. Special reports be prepared and sent to the Illaqa Magistrate and senior officials. Control room be intimated. Myself ASI along with other police officials and on the basis of secret information is proceeding toward Kala Bakra.”

3. He submits that despite the fact that the case was registered on the basis of secret information, Section 42 of the Act has not been complied with. He further points out to the order dated 27th of July, 2017 passed by Judicial Magistrate 1st Class, at the time the contraband was produced before the Magistrate in compliance of Section 52-A of the Act to submit that the Magistrate recorded as under :-

“ASI Dilbag Singh has presented before me two parcels, first parcel containing 18000 narcotic tablets mark Lomotil in green colour strips and second parcel containing 2000 narcotic

tablets mark Aprasafe 0.5 in silver colour strip, which were sealed with seal bearing impression 'D.S. G.S. and S.S. The same was opened in my presence and two sample parcels from first parcel i.e. 10 strips each strip containing 6 tablets mark Lomotil, two sample parcels from second parcel i.e. 5 strips each strip containing 10 tablets mark Alprasafe 0.5 was taken out. Remaining first Bulk parcel, second bulk parcel and sample parcels were also sealed with seal bearing impressions 'PM' of the undersigned and initiated by undersigned by token of their correctness. One sample parcel of first parcel, 10 strips each strip containing 6 tablets mark Lomotil and second parcel i.e. 5 strips each strip containing 10 tablets mark Alprasafe 0.5 is handed over back to said official for the stated purpose of sending to the Chemical Examiner for testing.”

4. He, thus, submits that as per the samples drawn before the Magistrate each sample parcel had 10 strips each containing 6 tablets mark 'Lomotil and 5 strips each containing 10 tablets mark 'Alprasafe 0.5'. He further submits that however the FSL report which has been relied upon records as under :-

“6.Articles received : Two parcels marked 1 and 2 in the laboratory, each sealed with one seal of 'PM' alleged to contain intoxicating material.

Seals on the parcels were found intact and tallied with the specimen seal impression.

On opening the parcels were found to contain the following.

Parcel No.1- Two hundred tablets of white colour in strips. Each strip was labelled as 'LOMOTIL'.

Average weight = 60 mg/tablet.

Parcel No.2- Sixty tablets of peach colour packed in strips. Each strip was labelled as 'ALPRASAFE 0.5'

Average weight- 135 mg/tablet.”

5. He submits that the sample which was sealed before the Magistrate and handed-over to the official for purpose of sending to the Chemical Examiner for testing, cannot be said to be the same parcel which was received by the Lab. It has been contended that in view of difference between quantity of the sample as referred to in the order of Magistrate and the one which has been detailed out in the FSL report, the story put-forth by the prosecution stands exposed and the petitioner cannot be charged with the offence punishable under the NDPS Act on the strength of FSL Report which is part of Challan

6. Ld. State Counsel is not in position to dispute the discrepancy between the order passed by the Magistrate and the contents of FSL Report appended along with Challan.

7. I have heard Ld. Counsel for the parties and have gone through the records of the case.

8. Ld. Counsel for the petitioner has made out a *prima facie* case. From comparison of the order passed by the Magistrate and the Report of FSL marked discrepancy between the two is evident. FSL Report cannot be

said to be related to the present case. The sample parcel sealed and handed-over to the official for sending the same to the Chemical Examiner before the Magistrate cannot be said to be the same parcel which was received by Lab.

9. In view of the aforesaid serious lapse on part of the prosecution, the Court is satisfied that *prima facie* it raises serious doubt about the story being projected by the prosecution. At this stage, it appears that the trial may not result in the conviction of the petitioner.

10. In the circumstances, without considering the merits of the case, the present petition is allowed. The petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

11. Needless to say that anything observed herein shall not be construed to be an opinion on the merits of the case.

September 28, 2022
Dpr

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No