

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CRM-M-9224-2022 (O&M)

Date of Decision: 11.1.2023

Rajan Sharma @ Raju

....Petitioner

VERSUS

State of Punjab

....Respondent

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Narinder S. Lucky, Advocate
for the petitioner.

Mr. M.S.Nagra, AAG, Punjab

KARAMJIT SINGH, J.

Prayer in the present petition under Section 439 of Code of Criminal Procedure is for grant of regular bail to the petitioner in case FIR No.236 dated 9.9.2020 registered for the offences punishable under Sections 22 of NDPS Act at Police Station Gate Hakima, District Amritsar.

Counsel for the petitioner *inter alia* contends that the petitioner has been falsely implicated in the present case and is in incarceration for the last more than 1 year and 2 months and is not involved in any other case under NDPS Act. He further submits that as per prosecution version, the petitioner and co-accused who were travelling on Activa were signaled to stop by the police officials and on this, both of them got perplexed and the Activa slipped and both the accused fell on the road and they tried to throw the transparent polythene bags hidden in their shirts but in the meantime, both of them were apprehended by the police party, meaning thereby, that the alleged medical intoxicants were recovered from the petitioner on his

personal search by the Investigating Officer who was of the rank of Sub Inspector and in this manner, alleged recovery was effected in violation of the mandatory provisions of Section 50 of NDPS Act and as such, entire recovery proceedings stand vitiated. He further submits that the total custody of the petitioner comes out to be more than 1 year and 2 months and he also remained on interim bail for a period of one year and had no misused the said concession and surrendered in time. He further submits that the trial is not progressing ahead as charges are yet to be framed by the trial Court. So, prayer is made that the petitioner be granted regular bail.

Present petition is contested by the State counsel. State counsel has filed short reply by way of affidavit of Kanwalpreet Singh, Assistant Commissioner of Police (Central), District Amritsar City. State counsel submits that in the present case, commercial quantity of medical intoxicants were recovered from the present petitioner and co-accused, both of whom, were traveling on Activa scooter; that there is no breach of the provisions of Section 50 of NDPS Act as the recovery was not effected on personal search of the accused. He further submits that sampling was properly done by the investigating officer in the presence of concerned Illaqa Magistrate and thereafter, the representative sample was sent for analysis and the same was found to be containing contraband. However, the State counsel has not disputed the fact that the petitioner is behind the bars for the last 1 year and 2 months and the trial has not progressed ahead till date.

I have considered the submissions made by the counsel for the parties.

As per short reply filed on behalf of the State, the petitioner was driving Activa while co-accused Rajan Sharma alias Babba was sitting

on the pillion seat and the police official signaled them to stop the two wheeler, on which, they got perplexed and Activa scooter slipped and both of them fell on the road and they tried to throw transparent polythene bags hidden in their shirts having brown coloured capsules but in the meantime, both of them were apprehended by the police officials and 950 loose Prowon Spas capsules were recovered from the polythene bag possessed by the petitioner while another 850 loose Prowon Spas capsules were recovered from the transparent polythene bag possessed by co-accused. In the written reply, it has been clearly mentioned that both the said polythene bags were hidden by the accused persons in their shirts and they tried to throw the same on seeing the police officials but during that process, they were apprehended. Admittedly, recovery in this case was not effected in the presence of any Gazetted Officer or Magistrate. In the given circumstances as the alleged contraband was recovered from the polythene bags which were initially kept concealed by the accused persons in their shirts, it is a debatable point as to whether mandatory provisions of Section 50 of NDPS Act are applicable in the case in hand, which is to be taken note of by the trial Court at the relevant time.

As per custody certificate, custody period of the petitioner comes out to be more than 1 year and 2 months and as has been admitted by the State counsel, the trial has not proceeded ahead after filing of the challan and further, as has been submitted by the counsel for the petitioner, the petitioner did not misuse the concession of interim bail which was availed by him for a period of about one year. Furthermore, the petitioner is not involved in any other criminal case under NDPS Act.

In view of above as in the present case, moot point as has been

discussed above which goes to the root of the case, has arisen, no purpose is going to be served by keeping the petitioner in custody for any longer period despite the fact that embargo provided under Section 37 of NDPS Act is there it being a case of recovery of commercial quantity of contraband.

For the foregoing reasons, without commenting on the merits of the case, the present petition is allowed and the petitioner is ordered to be released on bail subject to his furnishing bail bonds/surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

(KARAMJIT SINGH)
JUDGE

January 11, 2023
Paritosh Kumar

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