

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-19638 of 2023
Reserved on 17.08.2023
Date of Decision: 22.08.2023

Shamsher Singh @ SheraPetitioner
Vs.
State of PunjabRespondent

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Ms. Satwant Mehta, Advocate
for the petitioner.

Mr. M.S. Nagra, AAG, Punjab.

DEEPAK GUPTA, J.

Prayer in this petition filed under Section 439 Cr.P.C is for grant of regular bail to the petitioner in case FIR No.007 dated 16.01.2019 registered under Section 22 of NDPS Act at Police Station Goindwal Sahib, District Tarn Taran.

2. As per prosecution allegations, on 16.01.2019, a police party while on patrolling, found a young man coming from the side of closed Arihant Dhaga Factory Industry Area Goindwal Sahib, who at the sight of police party threw a polythene carried in his right hand on the ground and tried to turn back hurriedly. On apprehension, he disclosed his name as Shamsher Singh i.e. petitioner. After completing necessary statutory requirements, the polythene bag thrown by the petitioner was searched and was found to contain 900 intoxicating tablets of *Alprazolam* IP 0.5 mg. FIR was registered as petitioner could not produce any medical prescription to carry the tablets. FSL report revealed the ingredients of *Alprazolam* in the

contraband tablets. The recovered quantity was found to fall in commercial category.

3. It is contended by learned counsel that petitioner was earlier granted interim bail till awaiting the chemical report vide order dated 25.02.2019. It is submitted further that as per the prosecution, recovery was effected on 16.01.2019 and that on 17.01.2019, the police party along with petitioner having covered his face, got one photograph published in the newspaper showing a Scorpio vehicle bearing No.PB09-X-5123. It is contended that later on, the same IO/SHO, Police Station Goindwal Sahib on 18.01.2019 allegedly intercepted three persons, namely, Darshan Singh, Baljinder Singh and Sarwan Singh coming on Scorpio Vehicle PB09-X-5123 and recovery of intoxicating tablets was shown from them, regarding which FIR No.08 dated 18.01.2019 was lodged at Police Station Goindwal Sahib, District Tarn Taran. During the trial of the afore-said FIR No.08 of 2019, the accused of that case proved before the trial Court that Scorpio vehicle No.PB09-X-5123 was already in possession of the Police and acquittal was recorded as per judgment Annexure P.3.

4. Learned counsel for the petitioner further contends that Investigating Officer in both the cases, i.e. in the present case and in FIR No.08 of 2019 is the same and since the IO of that case has been found to have made false allegations in FIR No.08 of 2019 regarding recovery, so he is not believable in this case also. Still further, it is contended that total weight of the *Alprazolam salt* works out to be 127.8 grams, which is marginally higher than the commercial category and so, in all the circumstances, petitioner be allowed bail. Petitioner has also given details of two other cases in which he is involved.

5. Strongly opposing the bail petition, learned State Counsel submits

that petitioner had been earlier allowed interim bail on 25.02.2019 till receipt of the chemical report. Later on, petitioner failed to appear, due to which his bail was canceled and, ultimately, he was declared proclaimed offender on 02.02.2022. He was later on arrested on 03.08.2022 and this conduct of the petitioner itself dis-entitles him for grant of bail. Learned State Counsel submits further that after filing of the challan and framing of the charge, 2 out of 7 prosecution witnesses have already been examined. Attention is further drawn towards the custody certificate to contend that custody period of the petitioner is less than one year and that he is involved in two more cases pertaining to NDPS Act and so, Section 37 of the NDPS Act bars granting bail to him having regard to the fact that recovery of commercial category of contraband has been effected from him. Learned State Counsel has also drawn attention towards the additional affidavit dated 17.08.2023 filed by Deputy Superintendent of Police, Sub Division Khadur Sahib, to contend that photograph published in the newspaper relied upon by the petitioner, has nothing to do regarding the recovery of Scorpio vehicle from the petitioner. Though the recovery in two cases was effected by the same Investigating Officer but the Scorpio was recovered in separate FIR and not in the present case. With these submissions, prayer is made for rejecting the bail petition.

6. I have considered the submissions of both the sides and have appraised the record.

7. Recovery of contraband substance of commercial category has been effected from the petitioner. Section 37 of the NDPS Act clearly provides that a person accused of an offence involving commercial quantity is not be released on bail unless certain specified conditions are fulfilled. One of the condition is that

Court should be satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

8. In the present case, perusal of the custody certificate reveals that petitioner is involved in two more cases, one bearing FIR No.30 dated 22.02.2018 registered under Section 22 of the NDPS Act at Police Station Goindwal Sahib and other FIR No.136 dated 26.04.2022 registered under Section 21-C/29 of NDPS Act at Police Station Goindwal Sahib. In view of the involvement of the petitioner in two other cases under NDPS Act, it is clear that prima-facie petitioner has the propensity to commit similar offences and so, it cannot be stated that after being released on bail, he is not likely to commit any such offence.

9. Apart from above, petitioner was earlier released on interim bail till receipt of the chemical report, vide order dated 25.02.2019. However, he misused the concession of bail and disappeared after presentation of the challan and was ultimately declared proclaimed offender on 02.02.2022. He was later on arrested on 03.08.2022. Thus, if released on bail, petitioner is likely to abscond.

10. Petitioner wants to take benefit of the fact that his photograph along with the police party is published in a newspaper (Annexure P.2) with a Scorpio Vehicle PB09-X-5123 shown in the background and that said news report was published on 17.01.2019, although the same vehicle is shown to have been recovered by the same Investigating Officer in another case FIR No.08 of 2019 on 18.01.2019.

11. However, the petitioner cannot be allowed to take benefit of the said circumstance having regard to the fact that Scorpio vehicle appearing in the photograph has nothing to do with the recovery effected from the petitioner. As

per the prosecution allegations, petitioner was found coming on foot when he was apprehended by the Police party and recovery was effected from him.

12. Having regard to all the afore-said facts and circumstances but without commenting anything further on the merits of the case, petitioner is held to be not entitled for grant of regular bail. Hence, the present petition is dismissed.

August 22, 2023
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(DEEPAK GUPTA)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No