

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-29307 of 2021(O&M)
Date of Decision: 25.04.2023

Amandeep Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM :HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by:- Mr. Sandeep Verma, Advocate
For the petitioner.

Mr. C.L. Pawar, Addl. AG Punjab.

KARAMJIT SINGH, J.

The present petition has been filed by the petitioner under Section 439 Cr.P.C. seeking regular bail in case having FIR No. 19 dated 27.02.2021, registered under Section 22 of Narcotic Drugs and Psychotropic Substances Act (for brevity, the Act) at Police Station Kheri Gandain.

The prosecution story in brief is that petitioner Amandeep Singh and co-accused Bhupender Singh were apprehended by the police on the basis of secret information and on the personal search of petitioner police recovered 20 strips each containing 60 tablets of Lomotil, having batch number, manufacturing date and expiry date, from the right pocket of his trouser and on the personal search of co-accused Bhupender Singh 13 strips each containing 60 tablets of Lomotil having batch number. Manufacturing date and expiry date were recovered from the right pocket of his trouser and

the recovered tablets were taken into possession and the petitioner and Bhupender Singh were arrested by the police.

The counsel for the petitioner has, *inter alia*, contended that the petitioner is in custody for the last more than 02 years and 01 month and is having no criminal history and that there is no independent corroboration to the prosecution version and further co-accused Bhupender Singh is already granted regular bail by the Co-ordinate Bench of this Court vide order dated 29.06.2021 in CRM-M-23238 of 2021. The counsel for the petitioner has further contended that in the instant case the alleged recovery was effected totally in contravention of the mandatory provisions of Section 50 of the Act by the Investigating Officer. The counsel for the petitioner further submits that no Gazetted Officer or Magistrate was called at the spot by the Investigating Officer before the alleged recovery of medical intoxicants was effected from the pocket of the trouser worn by the petitioner. The counsel for the petitioner further submits that the alleged consent given by the petitioner, on the basis of which the personal search was effected by non-Gazetted Officer, has got no relevance in the light of the law laid by Hon'ble Supreme Court in **Arif Khan @ Agha Khan Vs. State of Uttarakhand 2018(2) RCR(Cr.) 931**. The counsel for the petitioner further submits that the trial is not progressing ahead and as such petitioner is entitled to get concession of regular bail.

The present petition is contested by the State counsel who submits that in the instant case petitioner gave his consent to the Investigating Officer to conduct his personal search and only thereafter personal search of the petitioner was conducted which resulted in recovery of commercial quantity of contraband. The State counsel further submits that

there was no violation of provision of Section 50 of the Act and in this regard the State counsel referred to judgment of the Hon'ble Supreme Court in **Crl. Appeal No. 1043 of 2021, Union of India through NCB Lucknow Vs. Md. Nawaz Khan**, decided on 22.09.2021. However, the State counsel has not disputed the fact that the petitioner is in custody for the last more than 02 years and 01 month and is having no criminal antecedents and that the trial is not progressing ahead as till date only one prosecution witness has been examined out of total 10 witnesses cited in the challan. The State counsel has also not refuted the fact that co-accused Bhupender Singh is already granted regular bail by the Co-ordinate Bench.

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

Admittedly, in the instant case recovery has been effected from the pocket of the trouser of petitioner and thus, mandatory provision of Section 50 of the Act is applicable to the present case. The case law referred by the State counsel is distinguishable from the facts of the present case as in the said case the recovery was not effected on the personal search of the accused and rather the recovery was effected from the car in which the accused was travelling.

In the light of the law laid down by Hon'ble Supreme Court in Arif Khan's case (supra), which has been relied upon by counsel for the petitioner, it is a debatable issue as to whether consent memo prepared by the Investigating Officer (non-Gazetted Officer) whereby the petitioner gave his consent to the Investigating Officer to effect his personal search is considered to be a sufficient compliance of mandatory provision of Section 50 of the Act and such personal search which was not effected in presence of

Gazetted Officer or Magistrate is considered to be legal and valid and would not vitiate the entire recovery proceedings.

Undoubtedly, the petitioner is in custody for the last more than 02 years and 01 month and is not involved in any other criminal case and it will take considerable time for the trial to conclude as till date only one witness is stated to be have been examined on behalf of the prosecution. In the given circumstances, no purpose is going to be served by prolonging the judicial custody of the petitioner.

Thus, 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.

25.04.2023

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(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No