

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-59882-2022

Date of Decision: 10.01.2023

NARDEEP SINGH

... Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. R.S. Sekhon, Advocate
for the petitioner.

Ms. Ramta Chaudhary, DAG, Punjab.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 439 Cr.P.C. is for the grant of regular bail in case bearing FIR No.149 dated 21.11.2021 (Annexure P-1) registered under Sections 15, 22, 61 of the NDPS Act, 1985 at Police Station Bahawala, District Fazilka.

2. The present FIR came to be registered at the instance of ASI Saroop Singh on the allegations that on 21.11.2021, he along with police officials was present in the area of T-point Dodewala Road, where he received secret information that Harpinder Singh and Nardeep Singh (petitioner) were coming from the side of Rajasthan on a Trolly bearing No.PB04-R-7579. He was informed that they were habitual of smuggling intoxicating tablets from

Rajasthan along with poppy husk and thereafter they sold the same in the area. As they were likely to travel from Rajasthan along with intoxicating tablets and poppy husk, if a raid was conducted they could be arrested with the contraband.

Based on the aforementioned information, the present FIR came to be registered. A *Naka* was led and the aforementioned truck was coming seen from the side of Rajasthan. It was signalled to stop and the accused alighted from the truck. After checking the truck 5000 tablets containing salt Tramadol Hydrochloride and 2400 tablets containing salt Alprazolam along with 9 kg of poppy husk was recovered. On weighing of the tablets it was found that the recovery was of commercial quantity of contraband.

3. The learned counsel for the petitioner contends that the recovery has been planted upon the petitioner at the Police Station. There is non-compliance of the mandatory provisions of Sections 42 and 50 of the NDPS Act. Harpinder Singh was the driver and owner of the truck and as such, the petitioner could not be said to have been in conscious possession of the contraband allegedly recovered from the truck. Reliance is place on the judgment of this Court in **Rohit Versus The State of Haryana, CRM-M-28139-2022, decided on 11.07.2022**. Since the petitioner was in custody since 21.11.2021 and all the prosecution witnesses were official witnesses, there was no question of the petitioner being able to tamper with the evidence, if he was granted the concession of regular bail.

4. On the other hand, the learned State counsel contends that a huge quantity of contraband has been recovered from the vehicle in which the petitioner was travelling. By no stretch of imagination can it be said that the

petitioner was unaware of the contraband being carried in the truck in question. The facts of the case of Rohit (supra) are different from the facts of the present case. He therefore, contends that in view of the bar under Section 37 of the NDPS Act, the petitioner was not entitled to the grant of regular bail.

5. I have heard the learned counsel for the parties at length.

6. A perusal of the FIR would reveal that as per secret information both the accused including the present petitioner were stated to be travelling in the vehicle and carrying contraband from Rajasthan into Punjab. The truck was stopped at a *Nakabandi* and as many as 7400 tablets were recovered along with 9 kg of poppy husk. At this stage, it cannot be said that the petitioner was not in conscious possession of the same. In the case of Rohit (supra), the facts were different. In the said case, three persons including one girl were travelling in a car. The said car was stopped at a *Nakabandi* and the recovery of 300 grams of heroin was effected from the person of Rahul alias Lallu, the driver of the vehicle. It was in that situation that this Court held that *prima facie* the petitioner therein (from whom no recovery had been effected) could not said to be in conscious possession. In the present case, however, a huge recovery has been effected from the vehicle and not from the personal possession of the driver-Harpinder Singh. It may also be relevant to mention here that Harpinder Singh had sought the concession of regular bail and after arguing had chosen to withdraw the same vide order dated 04.08.2022 passed in CRM-M-29736-2022.

7. In view of the aforementioned facts and the bar contained under Section 50 of the NDPS Act, I find no merit in the present petition and therefore, the same is hereby dismissed.

(JASJIT SINGH BEDI)
JUDGE

10.01.2023

JITESH

Whether speaking/reasoned:- Yes/No
Whether reportable:- Yes/No