

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-3395-2024

Omkar Singh @ Oma

.....Petitioner

Vs.

State of Punjab

.....Respondent

Reserved On: 07.03.2024
Pronounced On: 11.03.2024

CORAM: - HON'BLE MR. JUSTICE DEEPAK GUPTA

Argued By: Mr. Ruhani Chadha, Advocate
for the petitioner.

Mr. Madhur Sharma, DAG, Punjab.

DEEPAK GUPTA, J.

The petitioner is seeking regular bail by way of this petition filed under Section 439 Cr.P.C, in case FIR No.39 dated 22.04.2023 under Sections 22 & 25 of NDPS Act, 1985 registered at Police Station Sadar Raikot, District Ludhiana Rural.

2. Reply by way of an affidavit of Shri Rachhpal Singh Dhindsa PPS, DSP, Raikot, Ludhiana (Rural) has been filed on behalf of respondent-State.

3. As per allegations, on 22.04.2023, secret information was received by a police party headed by ASI Sukhwinder Singh to the effect that Omkar Singh @ Oma (petitioner) was indulging in business of selling intoxicating tablets, against whom different FIRs had already been registered and on that

CRM-M-3395-2024

day, he was traveling on Aactiva Scooty bearing No.PB-19Q-1819 and heading to Village Johlan, Sultan Khan with the intoxicating substance and if siege is laid, he could be apprehended. Finding the information to be reliable, *ruqqa* against the petitioner was sent. Besides, report under Section 42 of the NDPS Act was also sent to the police station for registration of the FIR. On the request of ASI Sukhwinder Singh, ASI Gurmeet Singh along with other police officials reached the spot. The petitioner was apprehended. Notice under Section 50 of the NDPS Act was served upon him and after making necessary statutory compliance, search of the plastic envelope carried by the petitioner was effected, out of which 1010 intoxicant tablets were recovered. These were converted into a parcel, which was taken into possession vide a separate seizure memo. On 23.04.2023, petitioner along with the sealed parcel of the contraband was produced before learned Judicial Magistrate 1st Class. Compliance of Section 52A of the NDPS Act was done. The contraband was put in three different parcels. After culmination of investigation, final report under Section 173 Cr.P.C. was presented in the Court.

4. It is contended by learned counsel for the petitioner that petitioner has been falsely implicated, which is evident from the fact that the report under Section 42 of the NDPS Act, notice under Section 50 of the NDPS Act as well as recovery memo are containing FIR number, though these documents were purportedly prepared prior to the registration of the FIR. Learned counsel contends that the said fact in itself is sufficient to create doubt on the prosecution story. Learned counsel has relied upon *CRM-M-48050-2021 (O&M)* titled as '**Gurpreet Singh v. State of Punjab**' decided on 07.02.2022.

Learned counsel also contends that petitioner is in custody for the last more

CRM-M-3395-2024

than 10 months; that trial is likely to take long time to conclude and so, in all these circumstances, he be allowed bail.

5.1 Opposing the bail petition, learned State counsel contends that recovery of intoxicating tablets of different salts, falling in the commercial category, was effected from the petitioner and so, he does not deserves to be given the benefit of bail particularly in view of the bar contained in Section 37 of the NDPS Act. Learned State counsel has also drawn attention towards the custody certificate revealing that petitioner is involved in five other criminal cases, out of which four pertain to NDPS Act.

5.2 However, it is concede that in the status report, it has not been disputed that FIR number finds mention in the report under Section 42; notice under Section 50 of the NDPS Act as well as the recovery memo. As per the status report, it was due to sheer negligence of the Investigating Officer and so, the departmental enquiry has been initiated against him. It is also mentioned that in the notice under Section 50 of the NDPS Act, name of Rajinder Singh @ Raju has been wrongly copied and pasted and that for this lapse on the part of the Investigating Officer, no benefit should be given to the petitioner. Prayer is made for rejecting the petition.

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

7. The FSL report (Annexure P-5) would reveal that intoxicating tablets as recovered from the petitioner were received in the FSL in three parcels and on analysis, these were found to contain the salt as mentioned against their name, as per following details -

Parcel 1:		
Exhibits		Ingredients found present
Exhibit 1	496 white colored loose tablets. Weight: 388mg/tablet	Tramadol Hydrochloride
Exhibit 2	335 white colored loose tablets. Average Weight: 169 mg/tablet	Lorazepam
Exhibit 3	63 white colored loose tablets. Average Weight: 134 mg/tablet	Etizolam
Parcel 2:		
	108 yellow colored loose tablets. Average Weight: 218 mg/tablet	Chlordiazepoxide Hydrochloride
Parcel 3:		
	08 peach colored loose tablets. Average weight: 133 mg/tablet	Etizolam

8. The weight of 496 Tramadol Hydrochloride tablets works out to be 192.448 gram.

The weight of 63 tablets of 134 mg each; and 08 tablets of 133 mg each containing the salt of Etizolam works out to be 9.506 gram.

The weight of 335 tablets of 169 mg each containing the salt of Lorazepam works out to be 56.615 grams; whereas weight of 108 tablets of 218 mg each containing the salt of Chlordiazepoxide Hydrochloride works out to be 23.544 gram.

9. No doubt that the contraband as allegedly recovered from the possession of the petitioner falls in the commercial category. However, serious doubts have been raised by learned counsel for the petitioner regarding the alleged recovery, in view of the fact that FIR number finds mention not only in the notice under Section 50 of the NDPS Act and seizure memo but also in the report sent under Section 42 of the NDPS Act. Annexure P-2 is the report

CRM-M-3395-2024

under Section 42 of the NDPS Act; Annexure P-3 is the notice under Section 50 of the NDPS Act, whereas Annexure P-4 is the seizure memo. All these documents clearly contain the FIR number, though these documents were purported prepared prior to registration of the FIR. In the status report, the said fact is not disputed that the documents as aforesaid contain the FIR number but it is explained to be due to the sheer negligence of the Investigating Officer and for that, departmental enquiry has been initiated against him. The said admission on the part of the respondent- State in itself creates suspicion on the entire prosecution case regarding the alleged recovery from the petitioner.

10. In *Parkash Kaur @ Pasho vs. State of Punjab*, CRM-M-42053-20121 (O&M) decided on 19.4.2022, FIR number was found mentioned in the report under Section 42 of the NDPS Act, though it was prepared and ruqqa was sent prior to the registration of the FIR and thus, there was no occasion for the Investigating Officer to mention the FIR number in these reports. Taking into account the said fact, the bail was granted, as the said circumstance created a suspicion about the investigation. Similarly in *Gurpreet Singh's case (supra)*, the ruqqa, non-consent memo and consent memo, though prepared prior to the recovery, contained the FIR number, which was considered to be a suspicious circumstance.

11. Petitioner is in custody for the last 10 months and 16 days as on 06.03.2024 as per the custody certificate placed on record, though he is involved in five other cases out of which 04 pertain to NDPS Act.

12. Having regard to the facts and circumstances, as have been noted above, but without commenting anything further on the merits of the case, and the fact that trial may take time to conclude, this petition is allowed. Petitioner

CRM-M-3395-2024

is admitted to bail on his furnishing bail bonds/surety bonds to the satisfaction of the Learned Trial Court/Duty Magistrate concerned, on usual terms and conditions.

(DEEPAK GUPTA)
JUDGE

March 11, 2024

Neetika Tuteja

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