

236

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.3202 of 2024 (O&M)

Date of decision : 29.01.2024

Jagdish @ Disha

..... Petitioner

versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. Vishavjeet Gill, Advocate for
Mr. Sahil Choudhary, Advocate
for the petitioner.

Mr. Ramesh Kumar Ambavta, AAG, Haryana.

PANKAJ JAIN, J. (ORAL)

1 This petition has been filed under Section 439 Cr.P.C. for grant of regular bail in case F.I.R. No.191 dated 19.07.2023 registered under Sections 22(c), 27a, 29 of NDPS Act at Police Station Sadhaura, District Yamuna Nagar.

2 As per the contents of the FIR, it has been alleged as under:-

“TO SHO Sadhaura District Yamunanagar. Today on 19.07.2023, ASI Sandeep Kumar 109/PKL HSNCB UNIT AMBALA with SI Rajkumar 137/A, ESI Mehboob Ali No. 524/YNR, EHC Gurmel Singh 689/KKR, with vehicle government number HR05GV- 4720 Scorpio whose driver is EHC. Ashok Kumar 1268/AMB, during the patrol investigation in connection with the narcotics crime, was present at Paharipur Naka at 07.30 PM when the secret informer together informed the ASI that Gaurav, son of Fakir Chand, resident of Ward No. 6, near Jama Masjid, Sadhaura police station. Sadhaura district Yamunanagar, which sells intoxicating capsules even today, Gaurav will go on foot from Sadhaura bus stand via Dausadka Chowk Sadhaura towards Sarawa to sell intoxicating capsules. If the blockade is done at Dausadka Chowk Sadhaura, then Gaurav will go along with his intoxicating capsules. The informer can be controlled and he went away by chance by revealing the appearance or identity of the

accused. If the informer is trustworthy then a separate time was prepared at 07.40 PM and the bad EHC Gurmail Singh 689/KKR was sent to Manager Police Station Sadhaura for information. Notice under section 42 NDPS ACT was prepared and sent to Shri Jitendra Singh HPS Deputy Superintendent of Police Bilaspur at his residence Court Complex Bilaspur Badst EHC Ashok Kumar 1268/AMB for information and the ASI prepared the raiding party of the government vehicle along with fellow employees. After doing this, Dausadka reached Chowk Sadhaura at 08.00 PAM and informed the passers-by about the situation and asked them to join the rendering party, all of them expressed their compulsion and went away, then ASI, with the help of his fellow employee, Dausadka Blockade was started on Sadhaura Road near Chowk Sadhaura, after about 10 minutes, according to the information given by the informant, a person was seen coming from the Sadhaura bus stand with a black polythene in his right hand, who after seeing the police party standing in front, The ASI started turning back, with the help of a fellow employee, he ran and controlled that person and asked for his name. When I asked him, he told me his name was Gaurav, son of Fakir Chand, resident of Ward No. 6, near Jama Masjid, Sadhaura police station, Sadhaura district, Yamunanagar, to whom the ASI told his name. After revealing your identity, you were informed that you are suspected to have intoxicating capsules. You or the black polythene held in your right hand is to be searched. You have the legal right to search yourself or the polythene held in your right hand in front of a gazetted officer. Notice on which Section 50 NDPS ACT can be prepared separately and read out or explained to Gaurav alias Chanchal in the Hindi language known to him, Gaurav alias Chanchal and the witnesses signed their respective notices, after which Gaurav alias Chanchal thought for some time. After understanding, he told me that I wanted to get myself or the black polythene in my hand searched in front of a gazetted officer. Which consent notice under section 50 NDPS Act has been prepared separately and Gaurav alias Chanchal has read and explained the above in the Hindi language known to him. Gaurav alias Chanchal and the witnesses have signed their respective signatures on the FIR. After that, from my mobile number 8950233999, I called Duty Magistrate Shri Randhir Singh, Deputy Divisional Officer Panchayati Raj Bilapur on his mobile number 986824678 at time 08. Called at 35 PM and informed them about the situation and about coming to the spot. Then the Duty Magistrate sir came to the spot in his private car at 09.10 PM, who as per rules issued notice Section 50 NDPS ACT or Consent Notice Section 50 NDPS ACT and sent Gaurav alias Chanchal. Revealed his identity to the person and after interrogating him, conducted

a physical search of the ASI and his fellow employees as per the rules. Apart from things of daily need, no other thing was recovered from the ASI and all the employees. Search memo was carried out and recovery memo was made, Gaurav alias Chanchal, employee, ASI or Duty Magistrate signed their respective signatures. After that, the Duty Magistrate ordered Man ASI to search Gaurav alias Chanchal, on which I, as per the orders of Duty Magistrate, Man ASI searched Gaurav alias Chanchal, son of Fakir Chand resident of Ward. No. 6 Near Jama Masjid Sadhaura Police Station Sadhaura District Yamunanagar Search was conducted during the search Gaurav Kumar alias Chanchal was held in the right hand of the above inside a black colored polythene DICYCLOMINE HYDROCHLORIDE TRAMADOL HYDROCHLORIDE ACETAMINOPHEN CAPSULES B.NO.- C-230512 MFG DATE 08/2023 MFG LIC NO 43/UA/2007 EXP DATE 04/2025 WHO MFG BY (SOUL HEALTH CARE-1) PRIVATE LIMITED (AN ISO 9001-2006 CERTIFIED GMP COMPLIANCE COMPANY) 7TH KM. JASPER ROAD KASHIPUR -244 713(UK) 22 STRIPS which contain 3 leaves in each strip containing 8x3 24 capsules. A total of 22x24 528 intoxicating capsules were recovered which were seized by ASI from his mobile number 8950233999, the mobile number of Shri Mati Ritu Female Drugs Control Officer Yamunanagar. Contacted 9258200008 who told me on the phone that Veranda should send a photo of the intoxicating capsules take out 8 capsules from one leaf and weigh them or write a separate application and send it to me through WHATSAPP. ASI took out 8 capsules from the leaf and weighed them with an electronic fork which was 8. The weight of the capsule was 4.47 grams, out of which 8 intoxicating capsules were inserted in the same leaf, total weight of 528 capsules was 295. which is equivalent to 02 grams, took a photo of a total of 528 capsules or wrote a separate application and sent it on WHATSAPP to the mobile number 9258200008 of the Drugs Control Officer Yamunanagar and it was also written in the application asking for an opinion whether these intoxicating capsules fall under the category of NDPS ACT. Coming to the verandah, I put the capsules back in the same black polythene, put them in a white colored cloth bag, prepared a palanquin separately, ASI put 3 stamps of its SK on the palanquin and put a seal of SK on the piece of white cloth. Sample seal was prepared by stamping and after stamping it was handed over to SI Rajkumar 137/A for use. After that, the duty magistrate also sealed the Package case intoxicant capsule or sample seal by putting a 1/1 stamp of his RK on it and keeping it with himself after the stamp. The duty magistrate verified the Package goods case and the intoxicating capsules and sample seal and signed his signature. The Package goods case and

the intoxicating capsules and sample seals were seized by the police as evidence. Recovery memo intoxicant capsules were prepared separately. Accused Gaurav alias Chanchal and witnesses put their signatures on memo. Duty Magistrate Saheb verified the recovery memo. Gaurav alias Chanchal has committed the crime of Section 22 C-61-85 NDPS ACT by illegally keeping intoxicating capsules in his possession. After writing a complaint, a detailed complaint is being sent to Badast SI Rajkumar 137/A police station Sadhaura. The case should be registered and informed with the case number and the area magistrate or higher officials should be informed through the special report of the case the in-charge HSNCB UNIT AMB has been informed about sending another investigation officer for further investigation on the spot, as the ASI is busy in the investigation on the spot. Am. AJ: Near Dausdaka Chowk Sadhaura.”

3 Learned counsel for the petitioner submits that the petitioner has been nominated on the basis of disclosure made by co-accused Gaurav who was found to be in possession of 528 capsules containing dicyclomine hydrochloride & Tramadol hydrochloride & Acetaminophen weighing 295.02 grams. He submits that apart from the said disclosure there is no incriminating evidence against him and merely on the basis of disclosure, the petitioner cannot be convicted. So far as his nomination by the co-accused is concerned, the same alone is a weak piece of evidence in terms of law laid down in **Tofan Singh Vs. State of Tamil Nadu, (2021) 4 SCC 1** and would not be sufficient to drive home guilt against him.

4 Custody certificate has been filed. The same is taken on record. As per the custody certificate, the petitioner has been in custody for 6 months and 7 days and has clean antecedents.

5 Learned State counsel on instructions from Investigating Officer does not dispute that apart from the disclosure made by co-accused, there is no incriminating evidence against the petitioner and that the petitioner has indeed clean antecedents.

6 I have heard learned counsel for the parties and have gone through the records of the case.

7 Keeping in view the incarceration suffered by the petitioner and the fact that the petitioner has clean antecedents, the present petition is allowed. The petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the Ld. Trial Court/Duty Magistrate, concerned. However, in addition to conditions that may be imposed by the Trial Court/Duty Magistrate concerned, the petitioner shall remain bound by the following conditions :-

- (i) *The petitioner shall not mis-use the liberty granted.*
- (ii) *The petitioner shall not tamper with any evidence oral or documentary during the trial.*
- (iii) *The petitioner shall not absent himself on any date before the trial.*
- (iv) *The petitioner shall not commit any offence while on bail.*
- (v) *The petitioner shall deposit his passport, if any with the trial Court.*
- (vi) *The petitioner shall give his cellphone number to the police authorities and shall not change his cell-phone number without permission of the trial Court.*
- (vii) *The petitioner shall not in any manner try to delay the trial.*

8 Needless to say that anything observed herein shall not be construed to be an opinion on the merits of the case.

(PANKAJ JAIN)
JUDGE

29.01.2024
Pooja sharma-I

Whether speaking/reasoned	Yes
Whether Reportable :	No