

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-5833-2024
Date of Decision:08.02.2024

Birbal Singh @ Harry ...Petitioner

vs.

State of Punjab ...Respondent

Coram : **Hon’ble Mr. Justice N.S.Shekhawat**

Present: Mr. Arishdeep Mraad, Advocate
 for the petitioner.

Mr. M.S. Bajwa, DAG, Punjab.

N.S.Shekhawat J. (Oral)

1. The petitioner has filed the present petition under Section 439 Cr.PC with a prayer to grant regular bail to him in case FIR No. 170 dated 02.09.2023, registered under Section 22 of NDPS Act, Police Station Bhikhi, District Mansa.
2. The FIR in the present case was registered on the basis of the statement made by ASI Nachhttar Singh and the same has been reproduced below:-

“I Nachhatar Singh 398/Mansa Alongwith Constable Sukhwinder Singh 268/Mansa was present in police station, then Munshi of Police Station told me that Constable Gurpreet Singh 1000/Mansa Alongwith Constable Lakhwinder Singh No. 55/ Mansa, Sh. Harpreet Singh 1512/ Mansa was on his way to city Bhikhi while he was patrolling in Mansa, he received a call on his number 9780005113 from the number 9815361473 while they were patrolling in Bhikhi, Dana Mandi that they saw 2 young man cutsurd were sitting looking downward and holding a black plastic polythene and they were searching here and there. After seeing the

police party, they immediately stood up and picked up the polythene with them and tried to Ran away. Constable Gurpreet Singh 1000/Mansa with the help of a fellow police officials apprehended them and asked for their names and address. Upon which, the first person told his name as Amandeep Singh alias Amni son of Mahinder Singh son of Ratan Singh resident of Kishangarh Farmahi and the second person gave his name as Birbal Singh alias Harry son of Bira Singh resident of Ward No. 3 Bhikhi, there was suspicion that there were Intoxicant tablets in the black colored plastic polythene in their hand. Some regular inspector be sent on the Spot. On which SI Nachhatar Singh 398/Mansa along with Constable Sukhwinder Singh 268/Mansa in a private vehicle reached at the spot and Constable Gurpreet Singh 1000/Mansa asked for the name and address of the persons apprehended, who told their names to me SI as Amandeep Singh alias Amani and Birbal Singh allas Harry Uttan. Then I told the above sald accused that the black colored plastic envelope which is in your possession is suspected to contain the Intoxicant Tablets, which is to be searched. An attempt was made to join the private witness but the same could not be done. Then I told above said accused that I am Investigation Officer Nachhatar Singh 398/Mansa posted at Thana Bhikhi, I am wearing my uniform as per my rank and my name plate is Affixed on my Uniform. The black plastic envelope which is in your possession is to be searched, but you have the legal right that you can get yourself and the black coloured plastic envelope which is in your possession be searched in presence of any Gazzeted officer or Magistrate or you can be taken along with black coloured plastic envelope before them. Separate notices were issued under section 50 of the NDPS Act upon which both the above said accused put their signatures on the above said notices and said that we want the search the black-colored plastic polythene in our possession, to be conducted on the spot. We have full faith in you. On which I prepared the Memo of information, right and consent separately

and signature of the witnesses and the signature of both the above said accused was obtained on the Memo. Then I search opened the black coloured plastic envelope in which strips of intoxicant tablets were found, upon counting the strips, 12 TRAMADOL PROLONGED RELEASE TABLETS IP (100 MG) TRAMATRUST SR 100 with deleted batch number Each strip contains 10-10 Tablets, In total 120 intoxicant tablets were recovered, and these 12 strips were kept in the same black plastic envelope which were put in the parcel. The parcel was stamped with his seal initialed as NS. Sample seal were prepared separately. After that the same was handed over to the Constable Gurpreet Singh 1000/Mansa. Then the plastic polythene containing the Intoxicant tablets duly sealed, Alongwith the samples of the seals, through Memo was taken into police possession. The signature of the witnesses were taken on the memo. Then as per procedure prescribed by the law, the bodily search was conducted on the above said accused the clothes of the accused, but no cash or valuables etc were recovered. Upon which seizure memo was prepared. The signature of the above said accused and the witnesses was obtained on the memo. Then I asked the above said accused from whose possession the intoxicant tablets were recovered, to show any licence or permit but they could not produce the same. That the above said accused by keeping in their possession 120 Intoxicant tablet without any licence or permit, have committed an offence under section 22,61,85 NDPS act. upon which RUKA against the Amandeep singh alias Amani s/o Mahendra singh s/o rattan singh R/o Kishangarh Farmahi and Birbal singh alias harry s/o bira singh r/o ward 03 Bhikhi was prepared in handwritten format in which offences were mentioned and handed over to Harpreet singh 1512/Mansa and sent him to police station for registration of the FIR. FIR be registered and number should generated and special reports should be Issued. Information of the same should be given to the PCR mansa. I am investigating the matter along with the fellow police men. sd/- Nachttar Singh ASI.

3. Learned counsel for the petitioner contends that as per the case of the prosecution, 120 tablets of Tramadol were allegedly recovered from the present petitioner and the alleged recovery falls within the ambit of “non-commercial” in nature. Learned counsel further contends that even though two more cases have been ordered to be registered against the present petitioner, however, the petitioner is on bail in all other cases. Even the procedure related to search and seizure was not followed.

4. On the other hand, learned State counsel has vehemently opposed the prayer made by learned counsel for the petitioner on the ground that the serious allegations have been levelled against the present petitioner and the petitioner is not entitled to grant of bail.

5 I have heard the learned counsel for the parties and perused the record.

6. The petitioner was arrested in the present case on 02.09.2023 and is in custody for the last about 04 months. The final report under Section 173 Cr. P.C is likely to be presented against him. Even the quantity of contraband recovered from the present petitioner falls within the ambit of “non-commercial” quantity.

7. Without commenting on the merits of the case, the present petition is allowed. The petitioner is ordered to be released on bail pending trial on his furnishing bail bonds and surety to the satisfaction of the concerned trial Court/ Duty Magistrate/Chief Judicial Magistrate subject to the following conditions:-

(i) The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade him to disclose such facts to the

Court or to any other authority.

(ii) The petitioner shall remain present before the Court on the dates fixed for hearing of the case.

(iii) The petitioner shall not absent himself from the Court proceedings except on the prior permission of the Court concerned.

(iv) The petitioner shall surrender his passport, if any, (if already not surrendered), and in case he is not holder of the same, he shall swear an affidavit to that effect.

(v) The petitioner shall also file his affidavit before the concerned Court, mentioning his ordinary place of residence and number of mobile phone, which shall be used by him during the pendency of the trial. In case of change of place of residence/mobile number, he shall share the details with the concerned Court/learned Trial Court.

(vi) In case, the petitioner is involved in any other criminal activity, during the pendency of the trial, it shall be viewed seriously.

(vii) The concerned Court may insist on two heavy local sureties and may also impose any other condition, in accordance with law, while accepting the bails bonds and surety bonds of the petitioner.

(viii) The petitioner shall report on every 1st Monday of English calender month before the concerned SHO till the conclusion of the trial and SHO shall mark his presence by making an entry in the Rojnamcha.

8. In case, the petitioner violates any of the conditions mentioned above, it shall be viewed seriously and the concession of bail granted to him shall be liable to be cancelled and the prosecution shall be at liberty to move an application in this regard.

08.02.2024
hitesh

(N.S.SHEKHAWAT)
JUDGE

Whether speaking/reasoned :
Whether reportable

Yes/No
: Yes/No