



CRM-M-11406-2024
Date of decision : 29.05.2024

Versus

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Mr. Mohit Kapoor, Sr. DAG, Punjab.

This petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case F.I.R. No.96 dated 2nd of August, 2023 registered for the offences punishable under Section 22 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act') at Police Station Giddarbaha, District Sri Muktsar Sahib, Punjab.

3. As per the contents of the FIR it has been alleged as under :

“SHO police station Giddarbaha, Fateh today I SI alongwith HC Sarabjit Singh No. 646/SMS, SCT Pritpal Singh 1129/SMS, PHG Ashok Kumar 11974 on Govt. vehicle No. PB 65BA-4097 (Bolero Camper) being driven by Sr.C. Pritpal Singh No. 1129/SMS, I SI alongwith investigating kit, private laptop and printer being

2024:PHHC:077040



operated by me SI, regarding patrolling and checking of suspicious persons were going from City Giddarbaha, river bridge, Hussnar, Bharu square, Nihal Dhaba and reached treatment plant square Giddarbaha, then one car which was coming from national high way towards Barajawala road side, to whom I SI signaled to stop, then driver of the car got perplexed and stopped the vehicle at once and tried to turn back side, than I SI with the help of accompanying officials surrounded the car and apprehended then, asked the name and address of the driver of the car and person sitting on the conductor seat, then driver of the car told his name as Ranjit Singh son of Darshan Singh son of Chand Singh resident of Piori and the person sitting on the conductor seat told his name as Ajay Kumar son of Surinder Singh son of Mohan Singh resident of Ward No. 12 near railway station Preetnagar Giddarbaha, then I SI took the search of the car and saw one transparent bag in front of gearbox inside the car and in which intoxicant bottles are there, therefore before taking search of the car I SI tried to join witness from public in police party, but due to night time no independent witness was found, then I SI told Ranjit Singh and Ajay Kumar sitting in the car that it is suspected that intoxicant bottles are there in transparent bag lying in the place in front of gearbox in your car, upon which I SI told Ranjit Singh and Ajay Kumar above said that search of you and of your car is to done, but you have right under the NDPS Act to get yourself and car searched by any Magistrate or Gazetted officer, therefore you can be taken in the same condition to Magistrate Sahib or Gazetted officer or they can be called at the spot, upon which apprehended Ranjit Singh and Ajay Kumar abovesaid said in one voice that we have full faith in you and you can search us and our car, then notice under section 50 of NDPS act of consent of Ranjit Singh and Ajay Kumar above said was prepared separately, printout was taken out and apprehended Ranjit Singh and Ajay kumar put their signature in Punjabi on notice and the Hawladar Sarabjit Singh 646/SMS and SCT Pritpal Singh 1129/SMS put their signature on it, then I SI checked the transparent bag lying on the front of gearbox in car, then from it 3

2024:PHHC:077040



intoxicant bottles mark Chlorpheniramine maleate and Codine Phosphate syrup Cocrex cough syrup 100mL each bottle has batch NO. VHL 2301038 MFG date 01/2023 Exp 12/2024 and 7 intoxicant bottle Codine Phosphate and Chlorpheniramine maleate syrup codistar cough syrup 100mL each bottle has batch no. A4JMW016 Mfg date 02/2023 exp date 01/2025, recovered total 10 intoxicant bottles were put in same transparent bag and prepared one parcel and put my stamp alphabet BS on the parcel, sample stamp was prepared separately, stamp after use was handed over to Hawladar Sarabjit Singh No 646/SMS, then I SI took above said case property total 10 intoxicant bottles from which 3 bottles intoxicant mark Chlorpheniramine maleate and Codine Phosphate syrup Cocrex cough syrup 100mL each bottle has batch NO. VHL 2301038 MFG date 01/2023 Exp 12/2024 and 7 intoxicant bottle Codine Phosphate and Chlorpheniramine maleate syrup codistar cough syrup 100mL each bottle has batch no. A4JMW016 Mfg date 02/2023 exp date 01/2025 and car no. DL4CAH 2942 color grey mark Honda city into police possession vide separate memo of recovery, witnesses put their signatures on it, then I SI took the search of above said persons, then from the right pocket of lower of Ranjit Singh 200 currency notes and from the pocket of lower of Ajay Kumar 150 Rs. currency notes were recovered, then prepared memo regarding personal search separately, apprehended above said put their signature in Punjabi on the memo, apprehended Ranjit singh and Ajay Kumar above said could not produced keeping license any or permit for intoxicant bottles in their possession at the spot, they by keeping in their possession 10 intoxicant bottles from which 3 intoxicant bottles mark Chlorpheniramine maleate and Codine Phosphate syrup Cocrex cough syrup 100mL each bottle has batch NO. VHL 2301038 MFG date 01/2023 Exp 12/2024 and 7 intoxicant bottle Codine Phosphate and Chlorpheniramine maleate syrup codistar cough syrup 100mL each bottle has batch no. A4JMW016 Mfg date 02/2023 exp date 01/2025 have committed offence under section 22/61/85 of NDPS Act, upon which present ruqa against Ranjit

2024:PHHC:077040



Singh and Ajay Kumar above said is written and sent to police station Giddarbaha, through PHG Ashok NO. Kumar 11974 for registration of case, after registration of case its number be intimated, special report be issued, 1/C PCR/SMS be informed through W/M, notice under section 42 of NDPS Act be prepared, I SI alongwith accompanying officials am busy doing investigation at the spot SD/- Balwinder Singh SI PC Giddarbaha date 02.08.2023.”

4. The petitioner is accused of being in possession of 10 bottles 100 ml. each of Cocrex i.e. Codine Phosphate.

5. Counsel for the petitioner submits that in terms of the commercial quantity as defined under Section 2(viia) of 1985 Act, commercial quantity would mean any quantity greater than the quantity specified by the Central Government by notification in the Official Gazette. He submits that the quantity notified by the Central Government in the Official Gazette is 1 litre. Meaning thereby that for the quantity to be commercial, it has to be more than 1 litre. The quantity alleged to have been found to be in possession of the petitioner being exactly 1 litre cannot be said to be commercial and thus rigors of Section 37 would not be attracted. Challan already stands presented. The petitioner is behind bars for more than 9 months and 23 days and 2 out of 14 cited witness could be examined by now.

6. Per contra, State Counsel opposes the bail plea by referring to the antecedents of the petitioner who is facing multiple prosecutions under the NDPS Act. However, he is not in position to dispute that so far as the

2024:PHHC:077040



present case is concerned, *prima facie* the quantity alleged to have been recovered from the petitioner would be intermediate.

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

8. Without commenting on the merits of the case, keeping in view the incarceration already suffered by the petitioner and the fact that the investigation already stands concluded and Challan stands presented, the present petition is allowed. The petitioner is ordered to be released on bail on his furnishing bail bonds/surety bonds to the satisfaction of the Trial Court/Duty Magistrate concerned.

9. 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 cellphone number without permission of the trial Court.

2024:PHHC:077040



- (vii) The petitioner shall not in any manner try to delay the trial.
- 10. In case of breach of any of the aforesaid conditions and those which may be imposed by the Trial Court, the prosecution shall be at liberty to move cancellation of bail of the petitioner.
- 11. Needless to say that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

May 29, 2024		(Pankaj Jain)
Dpr		Judge
Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No