



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

218 CRM M-31192 of 2024
Date of Decision:03.12.2024

Navdeep Kumar ...Petitioner
Vs.
State of Punjab ...Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Salil Dev Singh Bali, Advocate, for the petitioner.
Mr. M.S. Bajwa, DAG, Punjab.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the instant petition under Section 439 of the Cr.P.C. with a prayer to grant a regular bail in case FIR No.151 dated 26.05.2023 registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, '**the NDPS Act**'), (Sections 22(c) & 29 the NDPS Act were added later on) at Police Station Special Task Force, District STF Wing (Annexure P-1).
2. The FIR in the present case was registered on the basis of the statement made by ASI Balkar Singh and the same has been reproduced as below:-

“Copy Ruqa SHO, PS STF Range 4, SAS Nagar Mohali, Jai Hind, Today myself ASI along with Sipahi Vipin Sharma 5C/304, Senior Sipahi Navjot Kumar 90/Fazilka, Senior Sipahi Harmeet Singh 1119/Moga, Senior Sipahi Gurjinder Singh 1282/Moga, Senior Sipahi Prabhjot Singh 1302/Moga on Government vehicle Bolero No. PB-11-CB-5832 which was driven by Senior Sipahi Gurnam Singh 4-C/397 for patrolling and checking of bad persons was going from Office STF Ferozepur Range and reached to Guru Harsahai via Lakho Ke Behram and Golu Ka Maur. When the police party reached at Gate No. 01, Grain Market, Guru Harashai at around 03:10 PM, one special informer gave the signal of stop and informed that Navdeep Kumar S/o Vijay Kumar R/o Guru Ram Basti Ward No. 4 Guru Harsahai and he is habitual of selling the intoxicant tablets. He is also having Kohli Medical Hall at Guru Harsahai. He sell the intoxicant tablets from his medical hall. Today also he is coming from Sarupevala to City Guru Harsahai on his motorcycle HF-Deluxe No. PB-77-3004 color black. If the barricading is done at appropriate place then Navdeep Kumar can be caught red-handed with heavy quantity of intoxicant tablets. The information is trustworthy and Navdeep Kumar has completed the offence under Section 22 NDPS Act. So the ruqa was written for registering an FIR and was sent by E-mail Id meetgill1991@gmail.com of Senior

Sipahi Harmeet Singh 1119/Moga to the E-mail Id psstfsasnagar@gmail.com and ps-stf.police@punjabpolice.gov.in of police station STF, Phase-4, Mohali and original ruqa is sent by hand through Sipahi Vipin Sharma 5C/304 to the police station STF, Phase-4, Mohali for registering the case. The report of the secret information under section 42 NDPS Act is sent by hand through Sipahi Vipin Sharma 5C/304 to DSP STF Ferozepur Range. FIR be registered and number be informed. Special reports be issued and same be sent to Area Magistrate Sahib and Higher Officials. PCR be intimated. I ASI along with co-police personnel is going at the spot told by secret informer. Today at area Grain Market Gate No. 01, Guru Harasahi at 03:35 PM.

Sd/- Balkar Singh ASI STF Ferozepur Range dated 26-05-2023'.

3. As per the record, the police apprehended the petitioner, while he was coming on a motorcycle and on search of the two polythene bags carried by him on his motorcycle, recovery of 5400 tablets of Alprazolam 0.5 mg (Rlam 0.5) and 11400 tablets of Tramadol Hydrochloride 100 mg (Radol-100), (total 16800 intoxicating tablets) was made. During interrogation, the petitioner also disclosed that he had recovered intoxicating tablets from Vishal Dhuria, who was also nominated in the case and the offence under Section 29 of the NDPS Act was also added.

4. Learned counsel for the petitioner contended that in the present case, from the perusal of the challan, it can be seen that the batch number, manufacturing date and expiry date on the strips of tablets could not be noted as the same had been erased by a black permanent marker. While producing the intoxicating tablets before the Magistrate, the police could not mention the manufacturing date/expiry date/batch number of any of the strip. The samples were drawn by the Magistrate and as per form No. 6, 75 tablets of Alprazolam (one strip) and 60 tablets of Tramadol Dydrochloride (one strip) were drawn as samples and were sent to the Regional Testing Forensic Science Laboratory Bathinda Punjab on 30.05.2023. Vide its report dated 14.07.2023, the RTFSL came to the conclusion that the alleged medicines contained Alprazolam and Tramadol Hydrochloride, respectively. Learned counsel further contended that only one strip, i.e., 75 tablets of Alprazolam and one strip, i.e., 60 tablets of Tramadol Hydrochloride were drawn as samples and were sent to the laboratory for analysis and the remaining contraband was destroyed as per the orders of the Magistrate. He further contended that in such a factual background, only one strip each of Alprazolam and Tramadol Dydrochloride could be at the best taken to be the alleged recovered contraband. Further, one tablet of Alprazolam weighs 120 mg/per tablet and one tablet of Tramadol Hydrochloride weighs 338 mg/per tablet and, thus, the total weight of Alprazolam comes to $75 \times 120 \text{ mg} = 9000 \text{ mg}$ and the weight of Tramadol

Hydrochloride comes to $60 \times 338 \text{ mg} = 20280 \text{ mg}$ and the said recovery comes to be a non-commercial quantity. Learned counsel for the petitioner had also placed reliance on the law laid down by this Court in the matters of **Inderjeet Singh Vs. State of Punjab, 2021(3) Law Herald 1902** and **Karam Singh Vs. State of Punjab, 2019(1) Law Herald 32**.

5. On the other hand, learned State counsel submitted that in the present case, the recovery of 16800 intoxicating tablets was made from the conscious possession of the petitioner and the recovery falls within the ambit of “commercial quantity”. Still further, out of those tablets, the police had recovered 5400 tablets of Alprazolam 0.5 mg (Rlam 0.5) and 11400 tablets of Tramadol Hydrochloride 100 mg (Radol-100). Thus, keeping in view the FSL report, the total weight of the tablets of Tramadol Hydrochloride was found to be $338 \text{ mg} \times 11400 = 3853.2 \text{ grams}$. Further, the total weight of the tablets containing Tramadol Hydrochloride was $120 \text{ mg} \times 5400 = 648 \text{ grams}$. Thus, as per the provisions of the NDPS Act, the recovery of intoxicating substance in the present case fell within the ambit of “commercial quantity” and the stringent provisions of Section 37 of the NDPS Act are attracted in the present case.

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

7. In the present case, the petitioner had earlier filed a bail petition before this Court and after arguing at length, the petitioner

had withdrawn the petition on 21.12.2023. Now the second bail application has been filed by the petitioner, without any change of circumstance. While discussing the maintainability and scope of successive bail application, in a criminal trial, the Hon'ble Supreme Court in the matter of **Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav 2005(1) RCR (Criminal) 703: 2005 AIR Supreme Court 921** has held as under:-

“16. The principles of res judicata and such analogous principles although are not applicable in a criminal proceeding, but the courts are bound by the doctrine of judicial discipline having regard to the hierarchical system prevailing in our country. The findings of a higher court or a coordinate Bench must receive serious consideration at the hands of the court entertaining a bail application at a later stage when the same had been rejected earlier. In such an event, the courts must give due weight to the grounds which weighed with the former or higher court in rejecting the bail application. Ordinarily, the issues which had been canvassed earlier would not be permitted to be re-agitated on the same grounds, as the same it would lead to a speculation and uncertainty in the administration of justice and may lead to forum hunting.

17. The decision given by a superior forum, undoubtedly, is binding on the subordinate fora on the same issue even in bail matters unless of course, there is a material change in the fact situation calling for a different view being taken. Therefore, even though there is room for filing a subsequent bail application in cases where

earlier applications have been rejected, the same can be done if there is a change in the fact situation or in law which requires the earlier view being interfered with or where the earlier finding has become obsolete. This is the limited area in which an accused who has been denied bail earlier, can move a subsequent application. Therefore, we are not in agreement with the argument of learned counsel for the accused that in view the guaranty conferred on a person under Article 21 of the Constitution of India, it is open to the aggrieved person to make successive bail applications even on a ground already rejected by courts earlier including the Apex Court of the country. Next question in this case is : whether in the earlier proceedings, Courts including this Court, had given a finding in regard to the existence of prima facie case against the respondent or not ? If so, has the respondent brought on record any fresh material either factual or legal so as to empower the High Court to reconsider the earlier orders ?”

8. Still further, a Division Bench of this Court has held in the matter of **Paramjit Singh Chahal Vs. State of Punjab, 2017(2) DC (Narcotics) 49** as under:-

“7. We however, do not find the aforesaid submissions convincing enough to favour the Petitioner with his release on bail at this stage. We say so firstly for the reason that the Petitioner is undoubtedly being tried for various other offences including under Sections 21, 22, 25, 25A, 27 & 29 of the NDPS Act apart from certain other grievous offences under the IPC and Arms Act, for which the formal Charges were framed against him a

long time ago obviously on the basis of material available before the Trial Court. The Petitioner never sought to have those charges quashed by taking recourse to Section 482 Cr.PC within the prescribed period of limitation or even long thereafter. Besides, as already observed earlier in our last Order passed on 30.9.2016, for the purpose of deciding the bail Petition, we cannot venture into conducting a mini trial or fishing enquiry to determine the genuineness of the documents and reports regarding the business transaction of the Petitioner's Company. In any event, there is no justification to treat the charges already framed against him long ago as being groundless, when the same were not sought to be quashed at the appropriate stage, and when the trial conducted thereafter is apparently nearing its completion in the not too distant future”.

9. In the present case, the learned counsel for the petitioner has raised an argument that the quantity of the contraband recovered from the petitioner even though, falls within the ambit of “commercial quantity” but all the strips were not sent to the FSL for analysis and only a part of the recovery was sent to the FSL. However, at this stage, this Court cannot record the findings on the merit of the case in the present case. Only a *prima facie* case has to be examined by this Court for the limited purpose of disposal of the bail application and the matter shall be adjudicated on the merits by the trial Court after both the parties have led their respective evidence before the trial Court.

10. In view of the aforesaid discussion and the law laid down by this Court as well as the Hon’ble Supreme Court, this Court finds no merits in the present petition and the petition deserves to be dismissed by this Court.

11. Dismissed

03.12.2024 (N.S.SHEKHAWAT)

amit rana	JUDGE
Whether reasoned/speaking	: Yes/No
Whether reportable	: Yes/No