

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-39152-2021 (O&M)

Raj KumarPetitioner
Vs.
State of PunjabRespondent

CRM-M-12160-2022 (O&M)

Piyush AroraPetitioner
Vs.
State of PunjabRespondent

Reserved On.: 27.02.2024
Pronounced On: 04.03.2024

CORAM: - HON'BLE MR. JUSTICE DEEPAK GUPTA

Argued By: Mr. Nikhil Kumar Vashisht, Advocate for
the petitioner in CRM-M-39152-2021 (O&M).

Mr. Chandan Singh Rana, Advocate for
the petitioner in CRM-M-12160-2022 (O&M).

Mr. Sahil R. Bakshi, AAG, Punjab.

DEEPAK GUPTA, J.

In the two petitions titled above, both filed under Section 439 Cr.P.C., petitioners pray for their release on regular bail in case FIR No.77 dated 18.02.2021 under Section 22 of NDPS Act, 1985 registered at Police Station Division No.5, Ludhiana, District Ludhiana.

2. Allegations against petitioner Raj Kumar are that on 18.02.2021, he was apprehended and from his possession, 1200 tablets of Alprazolam and

2820 tablets of Tramadol were recovered. It is also the allegation that during his disclosure statement, said Raj Kumar nominated Piyush Arora [*petitioner in CRM-M-12160-2022 (O&M)*] to be supplier of the contraband.

3. It was alleged on behalf of petitioner Raj Kumar that he had been falsely implicated and recovery had been planted upon him. The allegation was that police had come in civil dress at his shop on 18.02.2021, which fact was captured on a CCTV. At later point of time, his car was also taken away from his shop, which incident was also captured on the CCTV.

4. The aforesaid allegations were noticed by this Court in order dated 29.11.2021 which is as under:

“The petitioner is seeking regular bail in FIR No.77 dated 18.02.2021, under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Division No.5, Ludhiana, District Ludhiana.

Learned counsel for the petitioner contends that although the alleged recovery is stated to have been effected at 05:25 p.m. on 18.02.2021 from near the Jagraon bridge, but the petitioner was taken away by the police officials, who had come in civil dress, from his shop at 01:43 p.m. on 18.02.2021. He also contends that there is a CD of the incident wherein police officials were seen taking away the petitioner from his shop. He has referred to the CD of the CCTV footage at Annexure P4. He also contends that the alleged recovery, which has been effected, was of Kalamazoo and Tramadol tablets. The petitioner had also been falsely implicated in another case. He further contends that the petitioner has filed a petition for quashing the FIR and a Coordinate Bench of this Court by order dated 01.09.2021 passed in CRM-M No.35641 of 2021 has directed the trial Court to adjourn the case beyond the date fixed by this Court.

Learned State counsel prays for time to seek instructions.

List on 09.12.2021.

Mr. J. Elan Chezhan, IPS, JCP City, Ludhiana, is directed to inquire into the matter and file his affidavit before the next date of hearing.”

5. Pursuant to the aforesaid order, fresh status report was filed by way of an affidavit of Shri J. Elanchezhian, IPS, Senior Superintendent of Police, Police District Khanna, District Ludhiana, the contents of which were noticed by this Court in order dated 24.03.2022. Following order was then passed by this Court on 24.03.2022:

“The instant petition is for seeking concession of regular bail in case FIR No. 77 dated 18.02.2021, offence under Section 22 of the NDPS Act, registered at Police Station Division No.5, Ludhiana, District Ludhiana.

Learned counsel for the petitioner inter alia submits that the petitioner has been falsely implicated in the present case. The recovery effected from the petitioner is 1200 tablets of Alprasafe and 2820 tablets of Tramadol. He has further drawn attention of the Court to the status report filed by way of affidavit of Sh. J. Elanchezhian, IPS, Senior Superintendent of Police, Police District Khanna, District Ludhiana. He has referred to the following extract of the said status report :-

“That it is respectfully submitted that from the inquiry conducted, it has been found that prior to registration of case/FIR against the petitioner wherein 2820 tablets of Tramadol and 1200 tablets of Alprasafe 0.5 were recovered, another case of the similar nature i.e., case/FIR No. 161 dated 29.07.2019, under Section 22/25/29-61-85 NDPS Act was registered against him in Police Station Sadar Jagraon, wherein also the similar nature of contraband was recovered. The FSL report of the mobile phone recovered from the petitioner in the present matter reveals presence of photographs dated 21.01.2021 of Tramadol Chloride tablets 100 mg, Clovidor 100 SR and another photograph of Tramadol Chloride tablets RLDOL 100 SR and a call recording dated 21.09.2020 wherein the petitioner can be heard discussing regarding sale/purchase of Tramadol (intoxicant tablets) with some unknown person. As emerged from the statements of the police officials, a secret information was received that the petitioner is in the possession of huge quantity of Tramadol tablets and he can be caught red handed whereupon the raid was conducted and the recovery

effected. However, the police officials in order to cover loss of time in getting the recovery effected changed the place of recovery and shown him to have been arrested from the naka.”

He submits that it is evident from the said status report that the place of recovery had been changed by the police officials. He further submits that when the wife of the petitioner submitted a representation for conducting a fair investigation into the matter, the said representation was also sent to the same SHO qua enquiry.

Ms. AK Khurana, DAG., Punjab, has opposed the application submitted by the petitioner and has referred to the following extract of the report Annexure R-1/T appended with the status report:

“In the present matter FSL report of mobile make oppo colour black phone of accused Raj Kumar was received from police Commissionerate Ludhiana one pen drive was also attached with it. They have sent written report with regard to FSL report and pen driver according to which dated 21.01.2021 one photo was found. On which Tramadol tablets 100 mg, cloveldol 100 sr was written. Apart from this one more photo was found on which Tramadol hydrochloride tablets LR-DOL 100Sr was written. All recording of 21.09.2020 was stored in pen drive which is mentioned on page no.1632 serial no.109 is registered. The call recording was produced in Raj Kumar was talking regarding purchasing of Tramadol from unknown person. It is evident from the photos and call recording that Raj Kumar is a drug dealer.”

By placing reliance upon the same, she has contended that the phone of Raj Kumar was sent to the FSL along with one pen-drive. It is submitted that call recordings of 21.09.2020 was stored in the pen-drive. The call recording was produced as per which Raj Kumar was talking regarding purchasing of Tramadol from unknown persons. She thus contends that the petitioner is a drug dealer.

It is however not in dispute that the petitioner was taken in custody on 18.02.2021 and the final report was filed on 20.04.2021. Charge in the said case has not yet been framed. I have considered the submissions advanced by the parties and noticed that change of the place of recovery needs to be better explained by the Superintendent of Police and also the fact as to under what

circumstances and by what authority was the phone intercepted and whether such interception has been done under a procedure known to law.

Adjourned to 25.05.2022.

In the meanwhile, petitioner is ordered to be released on interim bail on his furnishing requisite bail bond/surety bond to the satisfaction of the trial Court/Duty Magistrate, concerned.

Let a status report be filed by the Commissioner of Police, Ludhiana, clarifying the same on or before the adjourned date.”

6. Thus, as per the aforesaid order dated 24.03.2022, petitioner Raj Kumar was ordered to be released on interim bail.

7. Subsequent to the aforesaid order dated 24.03.2022, fresh status report by way of an affidavit of Dr. Kaustubh Sharma, IPS, Commissioner of Police, Ludhiana was filed and the following order was passed by this Court on 09.10.2023:

“The two petitioners – Raj Kumar and Piyush Arora are seeking regular bail in case FIR No.77 dated 18.02.2021 registered under Section 22 of the NDPS Act at Police Station Division No.5, Ludhiana.

Petitioner – Raj Kumar alleged his false implication by contending that he has been apprehended from a different place than the place as projected by the prosecution and that recovery of contraband has been planted upon him.

Status report in this regard was earlier filed by way of affidavit of Shri J. Elanchezhian IPS, Senior Superintendent of Police, Police Station District Khanna, District Ludhiana and after certain clarification sought by this Court, vide order dated 24.03.2022, fresh status report was filed by way of affidavit of Shri Kaustubh Sharma, IPS, Commissioner of Police, Ludhiana.

In light of the afore-said status reports, State is required to place on record the recovery memo of the mobile of the petitioner – Raj Kumar, allegedly taken into possession at the time of his personal search, along with extract of the relevant roznamcha of malkhana to show deposit of the said mobile therein.

Further respondent- State to clarify whether any supplementary challan

has been filed after it was found in the inquiry that part recovery of contraband was made from outside the shop near the Dayanand Medical College and Hospital, Ludhiana and rest of the recovery was effected from the residence of the petitioner, as is referred in the status report. State is further directed to disclose the stage of trial before the trial Court and as to how many witnesses have been cited and how many have been examined till date. Apart from above,

separate status report is required to be filed in CRM-M-12160 of 2022 titled – Piyush Arora Vs. State of Punjab, by specifying the role of said petitioner Piyush Arora.

To make compliance of the afore-said order, adjourned to 21.11.2023.

Interim order to continue.

A photocopy of this order be placed on the file of the other connected case.”

8. In compliance of the aforesaid order dated 09.10.2023, status report in the form of affidavit of Ms. Jasroop Kaur Bath (IPS) ACP, Civil Lines, Ludhiana, District Police Commissionerate Ludhiana has been filed, producing the copy of the recovery memo, documenting the seizure of mobile phone belonging to the petitioner during his personal search, regarding which entry was made in the Roznamcha register. Copy of the seizure memo is Annexure R-1/1 and that of the entry in the Roznamcha register is R-1/2.

9. From all the circumstances as above, it thus emerges that petitioner Raj Kumar, on one hand claims his false implication and plantation of the narcotic drugs upon him, whereas, on the other hand respondent- State claims that recovery was effected from the petitioner Raj Kumar, though the police officials in order to cover the loss of time in getting the recovery effected, changed the place of recovery and showed him to have been arrested from the Naka. These contentions are subject matter of trial. At the time, when

petitioner Raj Kumar was released on interim bail, he was in custody for the period of 01 year 01 month and 12 days. Petitioner Piyush Arora is in custody for the last more than 02 years and 06 months as per the custody certificate available on record, though he is involved in four other cases pertaining to the NDPS Act. Trial may take time to conclude.

10. Having regard to all the aforesaid facts and circumstances, but without commenting anything further on the merits of the case, both the petitions are allowed. The interim bail earlier granted to the petitioner Raj Kumar in this case is hereby made absolute till the conclusion of trial; whereas petitioner Piyush Arora is directed to be released on bail on his furnishing bail bonds/surety bonds to the satisfaction of the Learned Trial Court/Duty Magistrate concerned, on usual terms and conditions.

11. It is hereby made clear that nothing observed in any of the orders passed by this Court during proceedings of these petitions, shall influence the mind of the Trial Court while disposing of the case on merits.

(DEEPAK GUPTA)
JUDGE

March 04, 2024

Neetika Tuteja

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