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**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

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CRM-M-42436-2021 (O&M)
Date of decision : 17.09.2024

Gagan**...Petitioner**

Versus

State of Punjab**...Respondent**

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. P. S. Ahluwalia, Advocate
for the petitioner.

Ms. Ruchika Sabherwal, Sr. DAG, Punjab.

MANISHA BATRA, J.

1. The instant petition has been filed by the petitioner under Section 482 Cr.P.C. for quashing of order dated 31.08.2021, passed by the Court of learned Additional Sessions Judge, Ludhiana in case titled as ***State vs. Gagan @ Rinku*** arising out of FIR No. 131 dated 15.09.2013, registered under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (*for short 'the Act'*) at Police Station Division No. 2, Ludhiana, whereby the trial Court, while allowing an application filed by the prosecution, had directed the prosecution to arrange the sending of second sample of contraband, allegedly recovered from the petitioner, to the laboratory concerned and immediately thereafter to the office of Chemical Examiner, Kharar.

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2. Brief facts of the case relevant for the purpose of disposal of the present petition are that on 15.09.2013, ASI Narinder Kumar along with other police officials was on patrolling duty and was making inquiries from one Nachattar Singh. At about 06:00 PM, they noticed a car make *Ritz* bearing registration number PB-10-DH-3334, coming from Cheema Chowk side. The aforesaid car was stopped on the basis of suspicion and the driver was apprehended, who, on asking, disclosed his name as 'Gagan @ Rinku' i.e. the present petitioner. ASI Narinder Kumar suspected that there could be some objectionable substance in the car and he wanted to conduct the personal search of the petitioner as well as of his car. The petitioner was apprised of his legal rights under Section 50 of the Act, to which, he reposed faith in the investigating officer. On search of the car, a black colour polythene bag was recovered from its trunk/boot, which was containing opium wrapped in another white color polythene bag. Thereafter, two samples of 10 grams each were extracted and remaining opium was weighed, which came to be 980 grams and the same was put in a separate plastic box. Samples of the contraband and parcel of remaining contraband were sealed with seal 'NK'. Specimen of seal was prepared separately and seal after its use was handed over to ASI Jaspal Singh. Ruqa was sent to the police station through Constable Arvinder Singh for registration of the case. After registration of the FIR, investigation proceedings were initiated. Thereafter, one sample parcel was sent to Chemical Examiner on 20.09.2013. However, no report was received from the office of the Chemical Examiner with regard to sample sent on 20.09.2013. Thereafter, on 21.01.2016, a letter was received from

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Chemical Examiner, whereby the sample was again called on the ground that the sample, which was sent earlier, could not be received from the office of Dr. Rajinderpal Singh, although docket was received.

3. Subsequently, an application (Annexure P-4) was filed by the SHO of the police station concerned on 20.12.2017 before the trial Court for taking second sample from the alleged contraband on the basis that they had received information from the Chemical Examiner, vide letter dated 21.01.2016, wherein they had asked to supply sample again for analysis as the earlier sample was not received from Dr. Rajwinderpal Singh. On issuance of notice in the said application, the petitioner had filed reply (Annexure P-5) resisting the prayer made in the application by submitting that the application was not maintainable as the second sample cannot be drawn, there being no such provision in the Act. However, the trial Court, without considering the legal aspect, had allowed the said application moved by the prosecution for sending the sample for re-examination, vide impugned order dated 31.08.2021 (Annexure P-6).

4. Learned counsel for the petitioner has argued that the impugned order is not sustainable in the eyes of law as the same is contrary to the settled provisions of law. There is no specific provision in the Act for taking second sample for analysis. The aforesaid application was moved by the prosecution after the lapse of a period of about 04 years. As per record, the sample was sent to FSL, Kharar on 20.09.2013. However, till the time, the SHO was summoned by the trial Court and a letter was sent to the Director, FSL, Kharar in the years 2016/2017, no complaint was filed either by the SHO or by the

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Chemical Examiner stating that the sample was not received by Chemical Examiner, Kharar in the docket sent for examination from the police station concerned. More so, a perusal of the aforesaid application would reveal that no reason whatsoever had been given as to why after receiving the letter dated 21.01.2016 from the Chemical Examiner, the prosecution did not take any effective step for complying with the same till December, 2017. With these broad submissions, learned counsel for the petitioner has argued that the present petition deserves to be allowed and the impugned order is liable to be set aside. To fortify his argument, learned counsel for the petitioner has relied upon *Thana Singh vs. Central Bureau of Narcotics : 2013 (1) RCR (Criminal) 861*, *Laxmi Nagappakoli vs. Narcotic Control Bureau and another : 2014 (4) RCR (Criminal) 741*, *Amarjit Singh vs. State of Punjab : 2013 (4) RCR (Criminal) 524*, *Karan Kakkar vs. State of U.T. : 2014 (4) RCR (Criminal) 159*, *Kulwant Singh vs. State of Punjab : CRM-M-30695-2016, decided on 06.12.2017*, *Tejpratap Singh @ Tabbu vs. State of Punjab : 2015 (2) RCR (Criminal) 806* and *Jarmanjit Singh and another vs. State of Punjab : 2003 (2) RCR (Criminal) 753*.

5. Reply has been filed by the respondent-State, which is available on record. Learned State counsel, in terms of reply, has argued that there is no infirmity or illegality in the impugned order passed by the trial Court. She has submitted that one sample parcel was sent to Chemical Examiner on 20.09.2013. However, no report was received regarding analysis of the sample so sent and on 21.01.2016, a letter was sent by the Chemical Examiner, whereby the sample parcel was again called as the earlier sample was missing.

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The trial Court, while noticing all these facts, had passed the order dated 31.08.2021, thereby directing the prosecution to send second sample of contraband, allegedly recovered from the petitioner, to the laboratory concerned and immediately thereafter to the office of Chemical Examiner, Kharar. It is, therefore, urged that the present petition is liable to be dismissed.

6. I have heard learned counsel for the parties at considerable length and have also gone through the record carefully.

7. As per the allegations, the petitioner was apprehended by the police party on 15.09.2013, who was coming in a car bearing registration number PB-10-DH-3334. On suspicion that there could be some narcotic substance in the car of the petitioner, search of the same was conducted and a black colour polythene bag was recovered from its trunk/boot, which was containing opium wrapped in another white color polythene bag. Thereafter, two samples of 10 grams each were extracted and remaining opium was weighed, which came to be 980 grams and the same was put in a separate plastic box. Samples of the contraband and parcel of remaining contraband were sealed with seal 'NK'. Thereafter, one sample parcel was sent to Chemical Examiner on 20.09.2013. However, no report was received from the office of the Chemical Examiner with regard to sample sent on 20.09.2013. Thereafter, on 21.01.2016, i.e. after a gap of about more than two years, a letter was received from Chemical Examiner, whereby the sample was again called on the ground that the sample earlier sent by the prosecution could not be received, although docket was received. Thereafter, on 20.12.2027, an application was moved by the prosecution before the trial Court for taking

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second sample of the recovered contraband, on the aforesaid ground, which was allowed by the trial Court by passing the impugned order. The question that arises for consideration before this Court is as to whether second sample could be sent for chemical examination after such a long time on the basis of the request made by the prosecution?

8. It is well settled proposition of law that any request as to re-testing/re-sampling shall not be entertained under the NDPS Act as a matter of course. It may, however, be permitted, in extremely exceptional circumstances, for cogent reasons to be recorded by the trial Court. An application in such rare cases must be made within a period of fifteen days of the receipt of the test report; no applications for re-testing/re-sampling shall be entertained thereafter. However, in the absence of any compelling circumstances, any form of re-testing/re-sampling is strictly prohibited under the NDPS Act. Reliance in this regard can be placed upon *Thana Singh*' case (supra). Similar view has been expressed by this Court in *Karan Kakkar*'s case (supra). Learned counsel for the petitioner has also relied upon *Laxmi Nagappa Koli*'s case (supra), wherein, while relying upon *Thana Singh*'s case (supra), Hon'ble Supreme Court has held that the Special Judge, only in extreme and exceptional circumstance, can direct for examination of second sample and the first report of the FSL cannot be ignored. Admittedly, there is no provision in the NDPS Act for sending sample for chemical analysis by Chemical Examiner, however, there has been instances where Special Courts have been entertaining the applications for re-testing/re-sampling. Sometimes the applications are moved just to delay the proceedings. The question

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whether re-testing should be entertained in NDPS Act has been a matter of challenge in various petitions since long. It has been held in some of the judgments that it can be permitted only under extremely exceptional circumstances and cogent reasons are to be recorded by the Presiding Judge. An application in such cases must be filed within a period of 15 days of the receipt of test report and thereafter no such application should be entertained.

9. In the present case, one of the samples was drawn from the bulk quantity of the recovered contraband, was sent to the Chemical Examiner for its analysis on 20.09.2013. However, a letter was received from the office of Chemical Examiner for sending the second sample on 21.01.2016 i.e. after a gap of more than 02 years and 04 months. Not only this, the prosecution kept on sleeping on the request made by the Chemical Examiner for about 02 years and then on 20.12.2017, they moved an application seeking permission to the trial Court for sending second sample for analysis. It is not the case of the prosecution that the seal put on the sample sent for examination was tampered or it was damaged. The prosecution firstly did not bother to obtain FSL report for a substantial period of 02 years and 04 months and thereafter even on receipt of a letter from the office of Chemical Examiner, they are not shown to have taken any action till the end of the year 2017. It shows the lackadaisical approach of the prosecution. A perusal of the impugned order shows that the only ground taken by the trial Court for allowing the application moved by the prosecution was that the first sample could not be tested because it had been lost or misplaced. However, as per ratio of law as laid down in aforecited judgments, it can be permitted only under extremely exceptional

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circumstances, for which, cogent reasons are required to be recorded and application in such cases must be filed within a period of 15 days of the receipt of test report and thereafter no such application should be entertained. The trial Court, while passing the impugned order, has not recorded any cogent reasons giving rise to an extremely exceptional circumstance, which led to permitting the prosecution to send second sample for analysis. Even no explanation whatsoever has been given by the prosecution as to why after receipt of a letter from the Chemical Examiner on 21.01.2016, they had moved application for seeking permission of the trial Court only on 20.12.2017 i.e. after a gap of about 02 years. All this goes to show that no exceptional circumstance has been made out in this case for sending second sample. In view thereof, this Court is of the considered opinion that the impugned order is liable to be set aside.

10. Accordingly, the present petition is allowed and the impugned order is hereby set aside.

17.09.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No