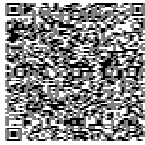


2024:PHHC:123556



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

116

CRR-1818-2024 (O&M)
Date of decision: 18.09.2024

Deepak Kumar @ Kartik Giri ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Kanwaljeet Singh, Advocate
for the petitioner.

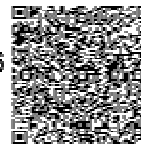
Mr. A. S. Samra, AAG, Punjab.

MANISHA BATRA, J. (Oral)

1. Prayer in this revision petition has been made by the petitioner for setting aside the order dated 02.08.2024, passed by the learned Judge, Special Court, Ludhiana in case bearing No. NDPS-341/2019, titled as *State vs. Deepak Kumar @ Kartik Giri*, arising out of FIR No. 293 dated 27.11.2018, registered under Sections 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (*for short 'the Act'*), whereby learned trial Court had dismissed an application filed by the petitioner for directing the District Nazir, Ludhiana to produce representative sample of the contraband allegedly recovered from him.

2. The facts relevant for the purpose of disposal of this petition are that the present petitioner is facing trial before the Special Court, Ludhiana for commission of aforementioned offence on the allegations that 02 kgs. of charas was recovered from him on 27.11.2018. During trial, he moved an application (Annexure P-3) before the trial Court submitting therein that

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after recovery of the contraband, the concerned Magistrate had drawn 02 samples of 250 grams each from the recovered charas. One representative sample was produced in the Court at the time of recording sworn deposition of PW-2 ASI Balwant Singh, Investigating Officer of the case, on 03.05.2019. It is further submitted that both, PW-2 Bawant Singh and PW-5 ASI Baldev Singh, who were the witnesses to the recovery, deposed that charas recovered from the petitioner was in pieces. It is submitted that the entire quantity of the charas was not sent to the laboratory and sample had not been drawn in accordance with law by the concerned Magistrate, while conducting proceedings under Section 52 of the Act. By further claiming that the production of the representative sample before the Court for the purpose of weighing each of the pieces of charas so recovered was necessary for just and fair decision of the case, prayer had been made by the petitioner for issuing direction for production of the representative sample. The trial Court, vide impugned order dated 02.08.2024, had dismissed this application by observing that no ground had been made to allow the same.

3. It is argued by learned counsel for the petitioner the impugned order is not sustainable in the eyes of law and is liable to be set aside as false recovery of 02 kgs. of charas has been planted upon him. The mandatory provisions of Section 52-A of the Act had not been followed by the Investigating Officer, which amounts to committing a serious lapse. Upon seizure of the contraband, it was to be forwarded to the Officer-Incharge of the nearest police station, who was to prepare an inventory and then move an application before the Illaqua Magistrate for drawing representative sample and for the purpose of certifying the correctness of the samples so drawn. It

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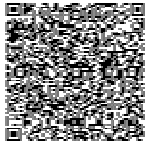


is submitted that it stands proved from the record that the entire quantity of the contraband was not sent to the laboratory. The sample was also not drawn in accordance with law. The representative sample was produced in evidence as Ex. MO-1. Learned trial Court did not apply its judicious mind while declining the prayer made by the petitioner. The Court did not consider the fact that the production of representative sample and weighing the same in the Court was very necessary for the purpose of facilitating the petitioner to challenge the procedure of drawing the sample and to show that it had not been drawn in accordance with law. It is, therefore, argued that the impugned order is liable to be set aside, the petition deserves to be accepted and the application moved by the petitioner before the Special Court deserves to be allowed.

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

5. On a perusal of the contents of the application filed by the petitioner before the trial Court as well as the contents of the impugned order passed by the trial Court, it is explicit that the representative sample of the contraband allegedly recovered from the petitioner was produced in the Court during examination of the Investigating Officer of the case and the same was exhibited as Ex. MO-1. Even PW-5, who was a witness to the recovery, was also shown that sample. Though, the petitioner is claiming that the production of the representative sample and weighing the same in the Court is necessary for just and fair decision of the case but neither it has been pleaded in the application which was moved before the trial Court nor in this petition as to why the production thereof before the trial Court at the

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stage when the case is fixed for producing defence evidence, was necessary. It is relevant to mention here that PW-2 ASI Balwant Singh had been examined way back in the year 2019 and the representative sample was exhibited during the course of his examination, whereas the application for production of this sample again in the Court has been filed on 15.04.2024. The pleas as taken in the application as well as in this petition are not reflecting the need for production of the representative sample in the Court and learned counsel for the petitioner has also not been able to show as to what purpose would be served even if the representative sample Ex. MO-1 is produced in the Court and the contents of the same are weighed therein. It is apparent that by getting this sample produced in the Court again, the petitioner wants to fill up some lacuna in the plea taken by him in his defence at the time of conducting cross examination of PW-2 and PW-5. He had already availed his right to challenge the procedure of drawing sample from the parcel containing the entire contraband. He cannot be permitted to wake up after a gap of about 05 years and to make payer for production of representative sample in the Court as that would not serve any purpose. More so, the trial is at its fag end as the prosecution evidence already stands concluded and even opportunity for producing defence evidence has also been availed by the petitioner. As such, no reasonable ground has been made to allow the petition. Accordingly, without commenting anything on the merits of the case, the same is dismissed.

18.09.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No