

Law Today Live Doc. Id. 15661

PUNJAB AND HARYANA HIGH COURT

Before: Arvind Singh Sangwan, J.

CRM-M-22300-2020

Decided on: 17.08.2020

Gurdev Kaur alias Gebo

Petitioner

Versus

State of Punjab

Respondent

Present:

Mr. J. K. Singla, Advocate for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985), Sections 22, 29, 52-A – Code of Criminal Procedure, 1973 (2 of 1974), Section 439 -- NDPS case -- Second petition for regular bail – New ground for filing the petition is FSL report – Submission that sample was received after a delay of 06 days from passing of order by the JMIC and for the said period, it remained in the custody of I.O and there is no explanation in this regard -- In the FSL report, no batch number of the strips were mentioned though it is specifically mentioned in the order of JMIC and in Form 29-B – Petitioner is in judicial custody for the last 01 year, 01 month and 21 days and charged were framed on 30.01.2020 and till date, out of total 13 prosecution witnesses, none has been examined -- Petitioner is involved in one more case under the NDPS Act of non-commercial quantity and the petitioner is on bail -- Considering the long custody of the petitioner as well as the submissions made, petition allowed.

(Para 3-12)

ARVIND SINGH SANGWAN, J. (ORAL) –

1. This is the second petition that has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No. 293 dated 25.07.2019, registered under Sections 22 and 29 of the Narcotic Drugs & Psychotropic Substances Act, 1985 at Police Station City Barnala, District Barnala.

2. The first petition, bearing CRM-M-49806-2019, was dismissed as withdrawn on 06.02.2020.

3. Learned counsel for the petitioner submits that the new ground for filing the present petition is that now the FSL report has been received.

4. Learned counsel for the petitioner further submits that as per the allegations in the FIR, while effecting the recovery of Clovidol-100 SR tablets, the same were in the shape of 50 strips of Batch No. TVD-19135, 15 strips of Batch No. TVD-19138 and 49 strips of Batch No. TVD-19140. Each strip was containing 10 tablets.

5. Learned counsel for the petitioner has placed on record order dated 26.07.2019, passed by the JMIC, Barnala on an application filed by the

prosecution under Section 52-A of the NDPS Act along with production of the accused and case property, wherein the said details have been given.

6. Learned counsel for the petitioner further submits that as per the aforesaid order, 06 representative sample (two each) containing 10/10 tablets were taken and sealed by the Court seal 'KK'. Remaining one bulk parcel of 48 strips (480 tablets), 13 strips (130 tablets) and 47 strips (470 tablets) were also signed and sealed with the seal 'KK' and the case property i.e. 03 samples (10 tablets) were ordered to be deposited with Judicial Malkhana and remaining case property was returned to the Investigating Officer for sending the same to the Chemical Examiner as per rules.

7. Learned counsel for the petitioner further submits that a perusal of the FSL report shows that the sample was received on 01.08.2019 i.e. after a delay of 06 days from passing of order dated 26.07.2019 by the JMJC, Barnala and for the said period, it remained in the custody of Investigating Officer and there is no explanation in this regard.

8. Learned counsel for the petitioner further submits that in the FSL report, no batch number of the strips were mentioned though it is specifically mentioned in the order of JMJC, Barnala and even in Form 29-B, there is a reference of three batch numbers, therefore, there is variation in the prosecution version and FSL report, which is to be decided by the trial Court.

9. Learned counsel for the petitioner further submits that the petitioner is in judicial custody for the last 01 year, 01 month and 21 days and charged were framed on 30.01.2020 and till date, out of total 13 prosecution witnesses, none has been examined.

10. Learned State counsel has not disputed the factual position and submitted that the petitioner is involved in one more case under the NDPS Act in which the recovery is of non-commercial quantity and the petitioner is on bail.

11. I have heard learned counsel for the parties.

12. Without commenting upon the merits of the case, considering the long custody of the petitioner as well as the submissions made by learned counsel for the parties, the instant petition is allowed. The petitioner is ordered to be released on regular bail on her furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate/Illaq Magistrate, concerned.

Petition allowed.
