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

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CRM-M-59860-2024 (O&M)
Date of decision: 16.05.2025

Dharminder Singh @ Tunda **...Petitioner**

Versus

State of Punjab **...Respondent**

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Ms. Jaspreet Kaur, Advocate
for the petitioner.

Ms. Sakshi Bakshi, AAG, Punjab.

MANISHA BATRA, J. *(Oral)*

1. The instant one is the second petition that has been filed by the petitioner under Section 439 of Cr.P.C. seeking grant of regular bail in case bearing FIR No. 120 dated 08.07.2023, registered under Section 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 *(for short 'NDPS Act')* at Police Station Nehianwala, District Bathinda.

2. Brief facts of the case relevant for the disposal of the present petition are that on 07.07.2023, on the basis of suspicion, the petitioner was apprehended by the police party when he was sitting under a street light and was having a transparent plastic polythene bag. Personal search of the petitioner as well as search of the said polythene bag was conducted and recovery of 480 tablets of *Alprazolam* and 1800 tablets of *Lomotil* (having salt of diphenoxylate/atropine) was effected from the said polythene bag. Since the petitioner could not produce any license or permit to keep in his possession the recovered drugs, he was formally arrested at the spot. After completion of

necessary investigation and usual formalities, *challan* was presented in the Court on 03.01.2024 and presently, the petitioner is facing trial for commission of aforementioned offence. He had moved an application for grant of regular bail before the trial Court but the same had been dismissed, vide order dated 01.02.2024.

3. Learned counsel for the petitioner has argued that he has been falsely implicated in this case. The recovery shown to have been effected from the petitioner was in fact planted upon him as it is highly unlikely for a person to carry contraband in a transparent polythene bag. It is further argued that investigation has since been completed and *challan* has been presented. Conclusion of trial is likely to take time. The petitioner is in custody since 08.07.2023. He is not involved in any other case of such or similar nature. No useful purpose would be served by keeping him in custody anymore. Therefore, it is urged that the petition deserves to be allowed and the petitioner deserves to be granted benefit of regular bail. To fortify her arguments, learned counsel for the petitioner has placed reliance upon the authorities cited as ***Binder Kaur @ Goga vs. State of Punjab, 2021 (3) RCR (Criminal) 360, Jaskaran Singh @ Jassu vs. State of Punjab, 2021 (2) RCR (Criminal) 837*** and ***Banti Kaur @ Bhanti Kaur vs. State of Punjab, CRM-M-4408-2021, decided on 02.08.2021.*** He has also relied upon a common order dated 15.02.2022 passed in ***CRM-M-44486-2021***, titled as ***Munish Kumar vs. State of Punjab***, and in two connected petitions.

4. Status report has been filed by the respondent-State. It is submitted therein and learned Assistant Advocate General, Punjab has argued that the petitioner is not entitled to get benefit of bail as a commercial quantity of the

contraband was recovered from him. He was nabbed at the spot. His story regarding false implication and plantation of the recovered contraband is concocted one. It is further argued that since the recovery of the contraband effected from the petitioner falls under the commercial quantity, the rigors of Section 37 of the NDPS Act would be attracted against him. Trial is going on at a proper pace. It is also argued that if the petitioner is released on bail, he can abscond or indulge in similar offences. Hence, it is urged that the petition is liable to be dismissed.

5. This Court has heard learned counsel for the parties at considerable length and have also perused the material placed on record.

6. As per the allegations, the petitioner was apprehended by the police party on 07.07.2023 and the recovery of 480 tablets of *Alprazolam* and 1800 tablets of *Lomotil* (having salt of *diphenoxylate/atropine*) was effected from a transparent polythene bag, which the petitioner was having. FSL report has been received, as per which, the total weight of Alprazolam tablets would come to 29.280 grams, which of course does not fall under commercial quantity. However, the total weight of *Lomotil* tablets would come to 113.40 grams, which not only falls within the ambit of commercial quantity but is also double of the threshold quantity of this contraband, it being 50 grams. The main thrust of the arguments advanced by learned counsel for the petitioner is that the petitioner has been falsely implicated in this case as the aforesaid recovery is shown to have been effected from a transparent polythene bag and a person carrying any contraband would never carry it in a transparent bag. This Court has perused the authorities relied upon by learned counsel for the petitioner. In ***Munish Kumar***'s (supra), the coordinate Bench, while relying upon the

judgments rendered in ***Banti Kaur***'s case, ***Binder Kaur Goga***'s case and ***Jaskaran Singh's*** case (supra) as well as some other similar judgments, had released the accused persons on bail, from whose possession commercial quantity of the contraband was recovered, while noticing the fact that the recovery was effected from a transparent bag and it was highly unlikely that a person who is committing an offence in respect of any contraband would do it in such a manner that his/her detection is inevitable. However, this Court, while having due regard to the views expressed by the coordinate Benches, respectfully finds itself unable to concur with the reasoning adopted therein.

7. If an accused sets up a claim of his false implication on the ground that no sensible person would carry contraband in a transparent bag on the logic that such visibility makes detection certain and thus defies common sense, then at the same time, this very logic must also apply to the police. If the allegation is that the police falsely implicated the petitioner by planting contraband, it is equally implausible that they would do so using a transparent bag, which would immediately raise doubts about the authenticity of the recovery. In fact, if the intention were to fabricate evidence and ensure a strong case, it would be far more logical for the police to use a concealed or opaque bag to avoid any suspicion of false implication. Therefore, in the considered opinion of this Court, the mere fact that the contraband was found in a transparent bag cannot, by itself, be treated as evidence of innocence or police malice. More so, this Court cannot and neither is it supposed to assess the intelligence, prudence, or strategic thinking of the petitioner/accused to conclude whether he would or would not have carried contraband in a transparent bag. Both scenarios create a paradox as the petitioner knowingly carrying it or the police falsely planting it,

are equally vulnerable to speculative reasoning and they seem unlikely as an accused carrying contraband openly in a transparent bag defies caution, whereas the police planting evidence in a transparent bag defies strategic thinking. It creates a logical standoff where neither side's behavior aligns perfectly with rational expectations. Hence, on this very ground, not even a *prima facie* inference can be drawn regarding false implication of the petitioner by planting the recovered contraband upon him.

8. Now, adverting to the present case. The petitioner has been apprehended with a commercial quantity of the contraband. Hence, the rigors of Section 37 of the NDPS Act would certainly apply to him as there is nothing on record to show that he did not commit the subject offence or would not commit similar offences, if he is released on bail. The trial is going on and there is nothing on record to suggest that there would be any undue delay in conclusion of the same. Therefore, keeping in view the discussion as made above, the gravity of allegations as levelled against the petitioner, the quantity of alleged contraband recovered from him, the quantum of sentence which the conviction may entail and the attendant facts and circumstances of the case, this Court is of the considered opinion that he does not deserve to be granted concession of regular bail, at this stage. Accordingly, the present petition is dismissed.

7. It is made clear that any observation made herein above is only for the purpose of deciding the present petition and the same shall have no bearing on the merits of the case.

16.05.2025 **(MANISHA BATRA)**
Waseem Ansari **JUDGE**

Whether speaking/reasoned *Yes*

Whether reportable *Yes*