
(2021) 09 P&H CK 0057

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous Petition (M) No. 5772 Of 2021

Anup Ram

APPELLANT

Vs

State Of U.T. Chandigarh

RESPONDENT

Date of Decision : 21-09-2021

Acts Referred:

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 20, 37, 50

Citation : (2021) 09 P&H CK 0057

Hon'ble Judges : Gurvinder Singh Gill, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Gurvinder Singh Gill, J

1. The petitioner seeks grant of regular bail in a case registered vide FIR No.28 dated 1.3.2019 under Section 20 of the NDPS Act, 1985 at Police Station Sarangpur, District Chandigarh.

2. As per the case of prosecution, on 1.3.2019 when a police party was present in connection with checking on the Mullanpur-Chandigarh road, then a white coloured Bolero Jeep was noticed coming towards Chandigarh. The said vehicle was signalled to stop by S.I. Naveen. The driver of the said vehicle stopped the vehicle but after alighting from the same immediately ran away carrying one white coloured polythene bag in his hand. However, he was apprehended by the police officials. Upon enquiry, he disclosed his name as Anup Ram. Upon checking the polythene bag held by him in his left hand, the same was found to contain 'charas' weighing 4 kilograms and 400 grams.

3. The learned counsel for the petitioner has submitted that in the instant case, no offer in terms of Section 50 of the NDPS Act (in short hereinafter referred to as 'the Act') was extended to the accused and in these circumstances, the entire recovery stands vitiated. It has further been submitted that since the complainant as well as the Investigating Officer is the same very officer, the

same is against the dictates of Hon'ble Supreme Court and that this Court in its order dated 27.9.2018 passed in CRM-M-42009-2018 - Manpreet Singh @ Bhinda Vs. State of Punjab (Annexure P-2) had granted bail while relying upon a judgment of Hon'ble Supreme Court passed in Criminal Appeal No.1880 of 2011 - Mohan Lal vs. State of Punjab [2018 (17) SCC 627].

4. On the other hand, the learned State counsel has submitted that it is a case involving recovery of a 'commercial quantity' of contraband and as such, fetters imposed by Section 37 of the Act would be attracted and the petitioner is not entitled to grant of bail.

5. I have considered rival submissions addressed before this Court.

6. As far as the first contention of the petitioner regarding non-compliance of Section 50 of the Act is concerned, the instant case is a case of chance recovery where the police party had no clue beforehand that the petitioner was carrying any contraband. Still further, the recovery in the instant case cannot be said to have been effected from the personal search and the same was effected from a polythene bag being carried by the petitioner which again would not attract application of Section 50 of the Act.

7. The question as regards the trial getting vitiated in case the informant is himself the investigator, as had been held in Mohan Lal's case (supra) came KAMAL KUMAR 2021.09.21 17:16 I attest to the accuracy and integrity of this document 3 CRM-M-5772-2020 (O&M) to be examined by a Constitution Bench in 2020(3) RCR (Criminal) 595, Mukesh vs. State (Narcotics Branch of Delhi) to which the said matter had been referred. Para 1 of the said judgement, where the controversy has been noticed reads as follows:

"Having doubted the correctness of the decision of this Court in the case of Mohan Lal v. State of Punjab reported in (2018) 17 SCC 627 taking the view that in case the investigation is conducted by the police officer who himself is the complainant, the trial is vitiated and the accused is entitled to acquittal, initially by order dated 17.01.2019 the matter was referred to a larger Bench consisting of three Judges. A three Judge Bench vide order dated 12.09.2019 has referred to a larger Bench of five Judges to consider the matter. That is why, the present matter is placed before the Bench consisting of five Judges."

8. The Constitution Bench, in Mukesh's case(supra), while setting at rest the controversy held as follows:

"In a case where the informant himself is the investigator, by that itself cannot be said that the investigation is vitiated on the ground of bias or the like factor. The question of bias or prejudice would depend upon the facts and circumstances of each case. Therefore, merely because the informant is the investigator, by that itself the investigation would not suffer the vice of unfairness or bias and therefore on the sole ground that informant is the investigator, the accused is not entitled to acquittal. The matter has to be decided on a case to case basis. A

contrary decision of this Court in the case of Mohan Lal v. State of Punjab (2018) 17 SCC 627 and any other decision taking a contrary view that the informant cannot be the investigator and in such a case the accused is entitled to acquittal are not good law and they are specifically overruled."

9. Thus, Mohan Lal's case having been over-ruled and the proposition of law having been held to the contrary, the contention raised on behalf of the counsel on strength of Mohan Lal's case can not be accepted.

10. Even otherwise, the recovered quantity of contraband which falls in the category of 'commercial quantity' would attract fetters imposed by Section 37 of the Act in the matter for grant of bail. Hon'ble Apex Court in a recent judgment i.e. 2020(1) RCR(Criminal) 818 State of Kerala vs. Rajesh Kumar has reiterated the legal position as regards the limitations imposed by Section 37 of the Act and has further held that a liberal approach in matters of bail in offences under NDPS Act is uncalled for. There is nothing on record at this stage from which it could be inferred that the petitioner is not guilty of the offence in question. The petition is found to be sans merit and is hereby dismissed.