
(1999) 03 P&H CK 0050

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 802-M of 1999

Rajdeep Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 31-03-1999

Acts Referred:

Citation : (1999) 3 AICLR 231 : (1999) 3 Crimes 308 : (1999) 2 RCR(Criminal) 647

Hon'ble Judges : M.L.Singhal, J

Advocate : I.P.S. Sidhu, Vikram K. Chaudhary, Advocates for appearing Parties

Judgement

M.L. Singhal, J.

1. This is Criminal Misc. No. 802M of 1999 by Rajdeep Singh petitioner whereby he has claimed bail in case FIR No. 151 dated 7.10.1998 registered under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station, Bhikhiwind, Distt. Amritsar.

2. The prosecution case, in brief is that on 7.10.1998 SI Surjit Singh, SHO Police Station, Bhikhiwind was going from village Bainka to village Fatehpur Musa in official Gypsy alongwith ASI Baldev Singh etc. On the way Dharam Singh son of Dalip Singh was joined. When they reached the canal bridge in the area of village Bainka, accused was sighted coming along the bank of the canal. At the sight of the police, he turned back. It aroused suspicion in the mind of SI Surjit Singh, who apprehended him. He was suspected to be carrying some narcotic in his possession. SI Surjit Singh told him that he had a mind to effect his personal search and if he wanted, he could be taken to a Gazetted Officer or Magistrate for search. He replied that Gazetted Officer could be called to witness his search. DSP Amarjit Singh Bajwa was called, who came to the spot. DSP asked the accused that he would be searched in his presence and whether he would like to be searched in his presence or in the presence of some Magistrate. He replied that he would like to be searched in his presence. Personal search of the accused yielded the recovery of 70 injections. He did not have any licence of keep those

injections in his possession. Seal after use was handed over to ASI Baldev Singh.

3. Learned counsel for the petitioner submitted that there has been violation of the provisions of Section 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985 inasmuch as if SI Surjit Singh wanted to be fair and just to the accused, he could send for some Magistrate or Gazetted Officer of some other department to witness the search from him. He further submitted that the presence of Dharam Singh was also doubtful as if he had really been present at the spot, the seal after use in all probability would have been handed over to him. It was further submitted that in the injections said to have been recovered from the possession of the accused, the morphine and sulphate ion content was found. Sulphate ion content was averaging 12.91 milligrams per millilitre. He submitted that these injections would not fall within the ambit of "narcotic drug" or "psychotropic substance" as the morphine sulphate content found was 12.91 milligrams per millilitre and the strength of morphine content has not been mentioned and morphine sulphate ion and morphine are independent compounds. In support of this submission, he drew my attention to *Sewak Singh v. State of Punjab*, 1998(4) RCR (CrL.) 832 : 1998(4) RCC 309 , where it was held that in order to achieve success under Section 18 of the Act, the prosecution has to establish that the incriminating injections contained morphine, the strength of which was more than 0.2%.

4. It was submitted that in view of the law laid down in *Sewak Singh v. State of Punjab*, 1998(4) Recent Criminal Cases 308 , injections containing morphine sulphate to the extent of 12.91 milligram per millilitre will not fall within the ambit of definition of "Psychotropic Substance" which means any substance, natural or synthetic, or included in the list of psychotropic substances specified in the Schedule. In *Sewak Singh v. State of Punjab* (supra), there was 20 milligram morphine sulphate content in every millilitre in the morphine injections. Hon'ble R.L. Anand, J. has held that for the prosecution to succeed, the prosecution had to establish that the incriminating injections contained morphine, the strength of which was more than 0.2%.

5. Without going much into these submissions, I feel bail should be allowed to the petitioner. So bail to the petitioner to the satisfaction of Chief Judicial Magistrate, Amritsar.