
(1998) 12 P&H CK 0070

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 26082-M of 1998

Tejinder Singh @ Mantu

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 09-12-1998

Acts Referred:

Citation : (1999) 2 RCR(Criminal) 320

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

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

Judgement

M.L. Singhal, J.

1. This is a Criminal Miscellaneous Petition filed by Tejinder Singh alias Mantu whereby he has claimed bail in case FIR No. 128 dated August 29, 1998 registered under Sections 22/61/85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Jhabal.

2. The prosecution story, in brief, is that on August 29, 1998, A.S.I. Sucha Singh was present at bus stand of village Moose laying special Nakabandi alongwith H.C. Manjinder Singh, Constables Des Raj, Kanwaljit Singh and Rajiv Kumar etc. A special informer came and informed him that a person was coming on a scooter bearing registration No. PB02P0858 from Amritsar side towards Bhikhiwind and that he was carrying narcotic injections in heavy quantity with him. He further informed that if the scooter was stopped and checked, Morphine Injections in heavy quantity could be recovered. After some time Tejinder Singh alias Mantu petitioner was seen coming on a scooter bearing the aforesaid registration number from Amritsar side. He was signalled to stop and he stopped. At the outset, ASI Sucha Singh told him that he had suspicion that he was carrying Narcotic Injections in the scooter and that he would search that scooter. He further told the petitioner that if he wanted he could taken to a Gazetted Officer or a Magistrate for search of scooter. Tejinder Singh alias Mantu replied that scooter be searched in the presence of a Gazetted Officer. The statement of the petitioner was recorded signifying his option in favour of search before a

Gazetted Officer. In the meantime, Balwant Singh came to the spot. He was also joined. Wireless message was flashed to Shri Nishan Singh, Deputy Superintendent of Police, Tarn Taran. He accordingly reached the spot. Deputy Superintendent of Police Nishan Singh told the petitioner that he was D.S.P. Tarn Taran/Gazetted Officer and whether he was opting for search of the scooter in his presence. Tejinder Singh alias Mantu at once replied that he had recognised him and that he wanted search to be conducted in his presence. Another consent memo was prepared. From the glazed paper 16 small boxes carrying 50 Morphine Injections each without label were recovered from the basket of the scooter.

3. It has been submitted by the learned Counsel for the petitioner that the prosecution story is doubtful inasmuch as if independent witness had been present at the spot, seal after use, in all probability, would have been handed over to him. He further submitted that earlier the brother of the petitioner was prosecuted on a similar charge. That prosecution was quashed by the High Court. It was further submitted that this case was initiated against the petitioner because the police felt let down by the quashing of the case against his brother. He further submitted that the petitioner is a licensed chemist. He is authorised to sell, stock or exhibit or offer for sale or distribute wholesale drugs other than those specified in Schedule (C)(CI) and X of the Drugs and Cosmetics Act, 1940 and the Rules thereunder. Reliance has also been placed on *M/s. Lovely Medicoes, Kot Kapura v. State of Punjab*, 1996(2) Recent Criminal Reports 679 . In that case, the allegation against the petitioner was that he had stored a large quantity of drugs narcotics without permit in his residential house and in another room owned by Ram Chand but on rent with the petitioner. Further, it was alleged that in case a raid is conducted, large quantity of drugs and narcotics can be recovered from his possession. On this information, the residential premises of the petitioner and the room on rent with him were raided and Dionine tablets each containing 15 mgs of Ethyl Morphine were recovered. It was held that the tablets of Ethyl Morphine commonly known as Codeine including Dionine recovered from the petitioner did not fall within the definition of Narcotic because the quantity of Dionine per dosage unit was within the prescribed limit. On analysis of Dionine, the quantity of Ethyl Morphine was found to be 15 mg. per tablet. Since each tablet contained about 15 mg. of Ethyl Morphine, the recovered drugs could not fall within the definition of opium as contained in the Act. Accordingly, according to the report of the Forensic Science Laboratory, each tablet weighed 0.214 grams and contained 15 mg. of Codeine Phosphate. It was held that these tablets could not fall within the ambit of "manufactured drugs" being excepted in item No. (35) of notification dated 14.11.1985.

4. Without going deep into the submissions of the learned Counsel whether the Morphine Injections would fall or would not fall within the ambit of Narcotic Drugs and Psychotropic Substances Act, 1985, I feel that bail should be allowed to the petitioner, particularly when he is a licensed Chemist. So, bail is allowed to the petitioner to the satisfaction of Chief Judicial Magistrate, Amritsar.