

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CRM-M No. 33826 of 2018

Date of decision : 23.10.2018

Bhola Singh

.....Petitioner

Versus

State of Punjab

...Respondent

CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY

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

Mr. Amit Mehta, Senior DAG, Punjab.

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DAYA CHAUDHARY, J.

Petitioner Bhola Singh has filed the present petition under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to him in case FIR No.36 dated 13.05.2018 under Sections 22/27-A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short – 'NDPS Act') registered at Police Station – Boha, Distt. Mansa, during pendency of the trial.

Learned counsel for the petitioner submits that the petitioner has falsely been implicated in the case, whereas no recovery was effected from him. As per case of the prosecution, ASI Angrej Singh along with the police party apprehended accused Bhola Singh (present petitioner) and Amrik Singh along with plastic bags carried by them. On checking, 45 strips of intoxicant tablets of TREDOL-100 were found in the bag being hold by

petitioner Bhola Singh and 20 strips of intoxicant tablet TREDOL-100 were found in the plastic bag, which was being hold by co-accused Amrik Singh. The petitioner was arrested on the basis of said recovery. Learned counsel further submits that the alleged recovery does not fall under the NDPS Act and falls under the Drugs and Cosmetic Act. One person namely Darshan Singh was allegedly joined in the investigation but he was not aware about the facts of the case and simply put his signatures under the pressure of the police. Learned counsel also submits that complainant as well as the Investigating Officer are the same person. Mandatory provisions of NDPS Act have not been followed. Neither the samples were handed over to any independent witness nor sent to Chemical Examiner for its analysis from the total recovery effected from the petitioner. There was delay of 5 days in sending the samples to the Forensic Science Laboratory and possibility of tampering with the samples cannot be ruled out. Learned counsel also submits that the alleged recovery of 45 strips of intoxicant tablets TREDOL-100 was effected and was produced before the Judicial Officer on 14.05.2018 with seals intact. The petitioner is in custody since 13.05.2018. The investigation has been completed. One of the co-accused of the petitioner namely Jagmail Singh alias Gogi has been released on anticipatory bail. All prosecution witnesses are official witnesses and there is no possibility that the petitioner may influence them or tamper with the evidence. There is no other case of NDPS Act against him.

Learned State counsel has not disputed the period of custody undergone by the petitioner as well as the stage of the trial.

Heard arguments of learned counsel for the parties and have also perused the contents of the FIR and other documents on the file.

By considering the submissions made by learned counsel for the petitioner and keeping in view the fact that the petitioner is in custody since 13.05.2018; that as per FSL report, Tramadol Hydrochloride is the salt in tablet TREDOL-100 and the salt Tramadol Hydrochloride is mentioned at Sr. No. 238 ZH of the Schedule attached with the Act and the recovery of more than 250 grams is commercial in nature; that provisions of Section 37 of the NDPS Act are not attracted; two persons were holding the bag containing contraband; all the prosecution witnesses are official witnesses and there is no possibility that the petitioner may influence them or tamper with the evidence; that as per the FSL report, in parcel No.1 the Tramadol Hydrochloride is 98.90 mg/tablet, whereas in parcel No.2 it is 98.25 mg/tablet, no purpose would be served by keeping the petitioner in custody.

Accordingly the present petition is allowed and the petitioner is directed to be released on regular bail on furnishing adequate bail/surety bonds to the satisfaction of the trial Court.

23.10.2018

sunil yadav

**(DAYA CHAUDHARY)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No