

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

CRM-M-50058-2018 (O&M)

Date of Decision:-20.11.2018

Jagjit Singh @ Bagdi

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

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

Ms. Simranjeet Kaur, AAG, Punjab.

GURVINDER SINGH GILL, J.(Oral)

By way of filing this petition, the petitioner seeks grant of regular bail in respect of a case registered vide FIR No.131 dated 2.8.2018 under Section 22 Narcotic Drugs and Psychotropic Substance Act, 1985 (Act No.61 of 1985) at Police Station Sardulgarh, District Mansa.

It is the case of prosecution that on 2.8.2018, when the police party was patrolling, then the petitioner was apprehended on the basis of suspicion and upon his search 35 strips of 'Tramadol' were recovered, out of which 14 strips of "Tramadol Hydrochloride Tablets 100 MG" marka 'Tredol 100" bore Batch No.TDP 18014 and 21 strips of "Tramadol Hydrochloride Tablets 100 MG" marka 'Tredol 100" bore Batch No.NT 17456.

The learned counsel has submitted that the sample in the present case was drawn in the presence of the Magistrate and although the recovered contraband comprised of two different batches, samples apparently were not drawn separately from both the batches. The learned

counsel in this regard has drawn the attention of this Court to the order dated 3.8.2018 passed by learned Sub-Divisional Judicial Magistrate at the time of drawing of samples. Although a perusal of the said order indicates that two samples were drawn but it is not indicated anywhere as to from which of the two batches of recovered contraband, the samples were drawn.

The learned counsel has further drawn the attention of this Court to the report dated 11.9.2018 (Annexure P-2) of Forensic Science Laboratory, which again indicates that the samples had been sent on the premises that the entire recovered contraband is of the same lot and batch inasmuch as the report is only in respect of one analysis.

On the other hand, the learned State counsel has submitted that since as many as 35 strips of 'Tramadol Hydrochloride' were recovered and the label on the strips clearly indicates that the same were 'Tramadol Hydrochloride' then it was not obligatory to send all the strips from each of the batch for analysis and that since as per report of Forensic Sciences Laboratory, the contraband has been ascertained to be 'Tramadol Hydrochloride', therefore, the entire quantity has to be taken into account and which falls in the category of 'commercial quantity' and in these circumstances, no case for grant of regular bail to the petitioner is made out.

Having considered the rival submissions addressed before this Court and bearing in mind the fact that in the present case apparently samples have not been drawn in respect of each of the two batches separately, therefore, at best the petitioner can be held liable either in respect of the batch of 14 strips of 'Tramadol Hydrochloride' or in respect of the batch of 21 strips of 'Tramadol Hydrochloride' since samples from each of the two batches have not been drawn separately. In case, the quantity in

respect of either of the two batches is considered separately i.e. either 14 strips or 21 strips, the said quantity separately would not fall within the category of 'commercial quantity' so as to attract fetters imposed under Section 37 of NDPS Act.

It has been informed that the challan has already been presented and charges have been framed against the accused.

Having regard to the aforesaid facts and circumstances of the case, in my opinion, it is fit case for grant of bail to the petitioner while also bearing in mind the fact that the petitioner is not involved in any other case. The present petition, as such, is accepted and the petitioner is ordered to be released on bail subject to his furnishing bail bonds/surety bonds to the satisfaction of the Chief Judicial Magistrate/Duty Magistrate concerned.

It is, however, clarified that none of the observations made above shall be taken to be an expression on merits of the main case.

The present petition stands accepted accordingly.

20.11.2018

pankaj

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned Yes / No

Whether Reportable Yes / No