

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

**Crl. Misc. No.M-10390 of 2019 (O&M)
Date of Decision: August 20, 2019**

Ravi Kumar

.....PETITIONER(s).

VERSUS

State of Punjab

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. P.S. Sekhon, Advocate
for the petitioner (s).

Mr. Arpinder Singh Sidhu, D.A.G. Punjab.

SURINDER GUPTA, J.(Oral)

The present petition has been filed under Section 439 Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No. 121 dated 22.11.2018 registered for the offence punishable under Section 22 of Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Cheema, District Sangrur.

Heard.

As per case of prosecution, a secret information was received by ASI Mohinderjit Singh of Police Station Cheema that four persons namely Ravi Kumar (petitioner), Bittu Singh son of Kala Singh, Gurtej Singh son of Jora Singh and Gurpreet Singh son of Basant deal in sale of intoxicating drugs and were possessing intoxicant tablets while sitting on motorcycle bearing registration No.PB-13-AV-5497 and Activa scooter

bearing registration No.PB-13AM-9417 in the area of Grain Market Seron and were waiting for the customers. On receipt of secret information, ruqa was sent to the police station, whereupon formal FIR was registered. A raid was conducted and four persons were seen standing near the above mentioned motorcycle and scooter. On witnessing the police party, they threw the strips of intoxicant tablets and one plastic bag containing intoxicant tablets on the ground and tried to run away. While a young boy succeeded in escaping from the spot, remaining 3 boys i.e. Ravi Kumar, petitioner Bittu Singh and Gurtej Singh were apprehended. ASI Mohinderjit Singh collected the strips of tablets thrown by these four persons and the plastic bag, which were total 410 strips containing 10 tablets each of *Clovidol-100 SR Tramadol Hydrochloride Tablets 100 mg*.

Learned counsel for the petitioner submits that police has clubbed the recovery from four persons to make out a case of common recovery of 4100 tablets. There is nothing in the recovery memo as to which of the accused had thrown how many strips and who was in possession of plastic bag containing the tablets and how many tablets were recovered from the plastic bag.

Learned State counsel submits that there was secret information against all the accused who were sitting together to sell the intoxicant tablets, as such, the recovery is to be considered common recovery from all the accused. Evidence has not been produced in this case so far and above fact may be proved in evidence.

As per the case of prosecution, four young boys threw strips of intoxicant tablets and a plastic bag containing strips of intoxicant tablets on

seeing the police party. This fact nowhere finds mention as to which of the four accused had thrown the plastic bag on the ground and how many strips of tablets were found in that plastic bag. It is also not specifically mentioned in the recovery memo about number of strips containing intoxicating tablets thrown by other accused.

I agree with the submission of learned counsel for the petitioner that the prosecution may produce evidence to prove as to which of the accused was having how much quantity of intoxicant tablets. It is a point to be seen by learned trial Court as to whether the prosecution has been able to prove the conscious possession of entire contraband from all the four accused or that they were in possession of separate quantities out of total 4100 tablets recovered at the spot while determining the quantum of recovery as small, non-commercial or commercial.

In view of above facts, provisions of Section 37 of Narcotic Drugs and Psychotropic Substances Act, 1985 are not attracted to the facts of the present case and the application seeking regular bail to the petitioner is allowed. Petitioner Ravi Kumar is ordered to be released on regular bail on furnishing bail bond and surety bond to the satisfaction of concerned Chief Judicial Magistrate/Duty Magistrate, subject to following terms:-

- a. The petitioner shall comply with the conditions mentioned in Section 437(3) Cr.P.C.
- b. In the event of his absence on any date of hearing, the benefit of bail allowed to the petitioner shall stand withdrawn. The trial Court shall be competent to cancel his bail bond and surety bond and proceed to procure his presence in accordance with law. In that eventuality the petitioner shall have to apply for bail afresh.

c. He shall not leave the country without prior permission of the Court.

August 20, 2019
Sachin M.

(SURINDER GUPTA)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>