

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

**CRM-M No.5771 of 2020
DATE OF DECISION:20.02.2020**

Gursewak Singh

...Petitioner

v.

State of Punjab

...Respondent

CORAM:- HON'BLE MR.JUSTICE LALIT BATRA

Present: Mr. Parminder Singh Sekhon, Advocate
for the petitioner.

Mr. Harpreet Singh Multani, AAG, Punjab.

LALIT BATRA, J. (Oral)

Present petition under Section 439 Cr.P.C is for grant of regular bail to petitioner-**Gursewak Singh** in case FIR No.134 dated 23.09.2017 under Sections 21 and 22 of NDPS Act registered at Police Station Kot Ise Khan, District Moga.

Short reply by way of affidavit of Yadwinder Singh, PPS, Deputy Superintendent of Police, Dharamkot, District Moga, on behalf of respondent-State, filed in Court, which is taken on record. Copy of above said reply has been supplied to learned counsel for the petitioner.

Learned counsel for the petitioner *inter alia* contends that petitioner has no nexus whatsoever with the alleged offence and he has been falsely implicated in the instant case. He further urges that alleged recovery of 58 strips, each strip containing 10 tablets i.e. total 580 tablets of Triesr Tramadol Hydrochloride and that too effected on 23.09.2017 from the

petitioner, could not attract penal provisions of NDPS Act, as Tramadol salt has been notified as Psychotropic Substance under the provisions of NDPS Act and that too vide Notification dated 26.04.2018 (Annexure P-2). He further urges that above said fact was well within the knowledge of Investigating Agency/Prosecution Agency as FSL report in terms of sample contraband (tablet Triesr) was prepared on 14.12.2017, wherein Tramadol Hydrochloride salt was detected in the sample contraband. He further urges that despite the fact that prior to issuance of Notification dated 26.04.2018 (Annexure P-2), Tramadol salt was not notified as Psychotropic Substance under the provisions of NDPS Act, action on the part of Investigating Agency/Prosecution Agency to initiate above said 580 tablets of Tramadol salt and to bring it within the ambit of NDPS Act and that too prior to 26.04.2018 shows lack of knowledge and high handedness on its part to interpret the provisions of NDPS Act at its whims and that too having scant care of law. He further urges that once alleged contraband i.e. 580 tablets of Tramadol salt did not fall within the ambit of NDPS Act, at the relevant time i.e. on 23.09.2017, prosecution of petitioner qua said aspect is sheer abuse of process of law. He further submits that petitioner remained in custody w.e.f. 25.09.2017 to 15.11.2017 and now he is in custody since 03.06.2019, the fact that alleged contraband 7 (seven) grams of heroin falls within marginally higher than the small quantity, the fact that petitioner is no more required by the Police for any investigation purpose, the fact that after completion of investigation, challan has been presented in the Court and trial has already commenced and the fact that trial of the case would

take sufficient time to conclude, no useful purpose would be served by keeping the petitioner in custody further and he may be released on bail.

On the other hand, learned State counsel while opposing instant petition has vehemently argued that keeping in view seriousness of offence, petitioner does not deserve the concession of bail.

I have heard learned counsel for the parties.

At this stage, without commenting anything on the merits of the case lest it may prejudice the outcome of the trial but taking into consideration the fact that contraband containing Tramadol salt was notified as Psychotropic Substance under the provisions of NDPS Act, vide Notification dated 26.04.2018 (Annexure P-2), whereas alleged offence qua recovery of 580 tablets of Tramadol salt and 7 (seven) grams of heroin took place on 23.09.2017, in that circumstance, Investigating Agency/Prosecution Agency have to introspect about applicability of provisions of NDPS Act qua alleged recovery of tablets containing Tramadol salt. Petitioner is in custody since 03.06.2019. Challan has been presented against the petitioner in the Court. Trial has already commenced and since trial of the case would take sufficient time to conclude, no useful purpose would be served by detaining the petitioner in custody further, thus, he deserves the concession of bail.

As a sequel to above, instant petition for grant of regular bail moved by petitioner-**Gursewak Singh** is allowed and he is ordered to be released on bail on his furnishing personal/surety bonds to the satisfaction of Trial Court/Chief Judicial Magistrate/Duty Magistrate, Moga, as the case

may be.

Copy of this order be sent to Director General of Police, Punjab, to look into the matter especially role of Investigating Agency/Prosecution Agency, in respect of alleged offence, which took place on 23.09.2017 and that too in the light of Notification dated 26.04.2018 (Annexure P-2) and applicability thereof.

(LALIT BATRA)
JUDGE

20.02.2020
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No