

Malkiat Singh

...Petitioner

Versus

State of Punjab

....Respondent

Coram : Hon'ble Mr. Justice B.S. WaliaPresent : Mr. Tejinder Pal Singh, Advocate for the petitioner.
Mr. Sarabjeet Singh, AAG, Punjab.

B.S. Walia, J. (VC)

1. Case is being taken up for hearing through Video Conferencing due to Covid-19 pandemic.

2. Prayer in the petition under Section 439 Cr.P.C. is for grant of regular bail to the petitioner during the pendency of trial in case FIR No.69 dated 14.07.2018 registered under Section 22, NDPS Act, 1985 at Police Station Gharinda, District Amritsar.

3. Learned counsel contends that the petitioner was arrested in the aforementioned case on 14.07.2018 and has been in custody since then, that out of 900 loose tablets recovered, only 10 tablets were sent for chemical examination, that each tablet contained 91.36 mg of tramadol hydrochloride salt, with net weight of each of the 10 tablets being 385 mg.

4. Learned counsel relies upon the decision of a Division Bench of this Court in case titled as '*State of Punjab versus Dharam Singh*', 2010(3) RCR (Crl.) 94 to contend that in the absence of all 900 loose tablets having been sent to the FSL, it would not be open to the prosecution to presume that the remaining 890 loose tablets also contain

91.36 mg of tramadol hydrochloride salt per tablet. Reliance is also placed by learned counsel upon the decision of a Co-ordinate Bench dated 11.11.2020 in *CRM-M No.26752 of 2020* in case titled as '**Harjinder Singh** versus **State of Punjab**'.

5. Learned counsel contends that total quantity of salt of the 10 loose tablets sent for chemical analysis, works out to 913.6 mg i.e. small quantity and further that in the absence of all 900 loose tablets having been sent for chemical examination, it is not open to the prosecution to presume that the remaining 890 loose tablets also contain the same salt.

6. Learned counsel further contends that the petitioner has been in custody since 14.07.2018 and out of 10 prosecution witnesses, only 01 prosecution witness has been examined and the trial is not likely to be concluded in the near future in view of the circumstances prevailing on account of Corona Virus Pandemic.

7. The position as noted above has not been controverted by learned State Counsel, who confirms that the number of loose tablets sent for chemical examination was only 10 and that tramadol hydrochloride salt detected in the aforementioned 10 tablets was 913.6 mg. Learned State Counsel has not been able to distinguish the judgment of Hon'ble the Division Bench in **Dharam Singh**'s case (supra), on the point that in case only a small sample from amongst the loose tablets is sent for chemical examination, it is not possible to presume that the remaining loose tablets also contain the same salt.

8. Accordingly, without commenting upon the merits of the case, but by taking into account that the petitioner has been in custody since

14.07.2018 and as per decision of the Division Bench of this Court in **Dharam Singh**'s case (supra) it is not possible to presume that all remaining loose tablets contain the same salt where only a small number of the loose tablets are sent for chemical examination as also in view of the fact that out of 10 prosecution witnesses, only 01 prosecution witness has been examined and the trial is likely to take considerable period of time to conclude in view of the circumstances prevailing on account of Corona Virus Pandemic, the petition for regular bail is *allowed* and the petitioner is ordered to be released on regular bail during the pendency of the trial on his furnishing bail bond and surety bond to the satisfaction of the learned trial Court / Chief Judicial Magistrate / Duty Magistrate concerned, provided he is not required in any other case. However, it is made clear that nothing stated hereinabove shall be construed as an expression of opinion on the merits of the case. It is also made clear that in case the petitioner misuses the concession of bail in any manner whatsoever, the prosecution would be at liberty to move an application for cancellation of bail granted to the petitioner in the instant case.

9. Petition allowed in the aforementioned terms.

(B.S. Walia)
Judge

28.06.2021

'Rajneesh/Amit'

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