

CRM-M-30169-2021(O&M)

[1]

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

**Criminal Misc. No.M-30169 of 2021(O&M)
Date of Decision: August 13, 2021**

Mohan Lala @ Kala

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

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Present: - Mr.Preetinder Singh Ahluwalia and
Mr.Ishan Gupta, Advocates
for the petitioner.

Mr.Sarabjit Singh, AAG, Punjab.

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HARINDER SINGH SIDHU, J.

Present petition has been filed under Section 439 Cr.P.C. seeking regular bail in case FIR No.55 dated 15.05.2021, under Sections 22, 61 and 85 NDPS Act, registered at Police Station Longwal, District Sangrur.

As per the allegations in the FIR secret information was received on 15.05.2021 at about 12:20 P.M, that petitioner-Mohan Lal @ Kala resident of village Kila Bharian has been running a medical shop near his house in the village. The secret information disclosed that the petitioner is indulging in selling intoxicant tablets and he had kept intoxicant tablets in his shop and in his house, in front of his shop. On the basis of secret information, case was registered against the petitioner under Section 22 of NDPS Act. Thereafter, raid was conducted at the disclosed place. When police party reached the lane near house of the petitioner, he was seen coming from opposite direction. He was holding one heavy polythene bag in

his hand. On seeing police party he got frightened. He threw the polythene bag towards his left side in a house through the open gate. He was apprehended.

It is the case of the prosecution that the thrown scattered strips of intoxicants tablets totalled 900 tablets of Tramadol Hydrochloride. Thereafter, in the presence of Drug Inspectors and other police officials, 178 tablets 'ETIZAP 0.5 mg' were recovered from the shop of the petitioner. 9000 intoxicants tablets make ETIZAP 0.5 mg were recovered from the house situated in front of the shop.

Mr. Preetinder Ahluwalia, Ld. Counsel for the petitioner has argued that the petitioner is a valid drug licence holder and is competent person of M/s Sangatpura Medical Hal, Main Bus Stand, Leragaga, The premises in question i.e. M/s God Medical Store Village Kila Bharian from where ETIZAP 0.5 mg was recovered is owned by his brother Harjinder Pal, who is a qualified person in-charge and proprietor of the said firm. The petitioner has no concern with M/s God Medical Store. He has referred to the license Annexure P-4, wherein, Harjinder Pal is stated to be Proprietor of M/s God Medical Store at village Kila Bharian, Tehsil and District Sangrur.

He contended that the petitioner has been falsely implicated in the case which he seeks to substantiate from the following sequence of events. He states that at about 10.00 AM on 15.05.2021 i.e., the date of the alleged incident a police party picked up the petitioner from his house. He was brought to Police Station, Longowal and detained there in illegal custody. At about 12.15 PM the police party along with Drug Inspectors and other officials of the office of Drug Controller visited the premises of M/S God Medical Store. They took various samples and prepared Form-17 at

1.00 PM.

The petitioner after being illegally detained by the police at 10.15 AM was brought by the police officials to the premises of M/s God Medical Store at 12.38 PM. Baljinder Singh Pannu Deputy Superintendent of Police as Gazetted Officer arrived there at 1.58 PM and left immediately at 1.58 PM. Thereby he stayed at the place only for one minute. The police party along with the Drug Inspector left around 2.05 PM.

These facts are evident from the CCTV cameras installed in the premises of the petitioner. The petitioner has annexed the copy of the CCTV footage as Annexures P5 and the photographs as Annexure P-7.

On an application moved by the petitioner the Ld. Judge, Special Court Sangrur had passed order dated 10.06.2021 directing the SHO PS Longowal to preserve the CCTV footage of the DVR of that date.

He argued that as per the FIR the secret information was received at 12.20 PM, ruqa was sent at 1.00 PM. It is only after that the police party started from Longowal towards village Kila Bharian which is at a distance of 10 Kms. But the Drug Inspectors had already prepared Form-17 at about 1.00 PM. He argued that from a perusal of timings in the FIR and the CCTV footage the factum of the FIR being ante-timed is clear.

He further pointed out that the alleged contraband Etizap 0.5 mg recovered during the search has been purchased by M/s God Medical Store against a valid invoice dated 22.7.2020. Copy of the invoice has been annexed as Annexure P-9. Copy of the order under Section 52-A of the Act wherein the batch no., manufacturing date, expiry date and other identifying particulars of the seized narcotics has been annexed as Annexure P-10. These particulars are the same as in the invoice.

Ld. Counsel for the State on the other hand argued that a huge quantity of contraband has been recovered from the petitioner. The veracity of the assertions of the petitioner can only be tested at the stage of trial.

In the light of the contentions aforesaid and particularly having perused the photographs annexed with the petition, the assertions of the petitioner cannot be lightly brushed aside. The photographs show a police party arriving at 10.14 AM on 15.05.2021 and leaving along with the petitioner at 10.16 AM. This does not square up with the recital in the FIR that secret information was received at 12.20 PM on 15.05.2021 about the petitioner keeping intoxicant tablets, that the ruqa was sent at 1.00 PM and the petitioner was apprehended thereafter.

Though the final adjudication regarding the claim of the petitioner has to await the trial yet a serious dent is cast on the version of the prosecution that when the raid was conducted the petitioner was seen coming and he threw the bag of polythene and 900 tablets of Tramadole Hydrochloride which were scattered were recovered.

Regarding the recovery Etizap 0.5 mg which had been recovered from the the search of M/s God Medical Store and the house adjacent thereto the petitioner has been able to demonstrate that these tablets had been purchased by M/s God Medical Store against a valid invoice dated 22.7.2020 (Annexure P-9). The batch no., manufacturing date, expiry date and other identifying particulars of the seized narcotics as depicted in the order under Section 52-A of the Act (Annexure P-10) are the same as in the invoice.

In view of the aforesaid in my view it is a fit case for grant of

bail to the petitioner.

Accordingly this petition is allowed. The petitioner is directed to be released on bail on his furnishing bail/surety bonds to the satisfaction of the Trial Court/Duty Magistrate concerned.

It is made clear that nothing stated herein shall be construed as an expression of opinion on the merits of the case.

August 13, 2021

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(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No