

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

Sr. No.202

**CRM-M-37148-2021 (O&M)
Date of Decision : October 11, 2021**

Kamaldeep Kanda @ Kamal

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Ruhani Chadha, Advocate, for the petitioner.

Mr. Harpreet Singh Multani, AAG, Punjab.

SUDHIR MITTAL, J. (ORAL)

This is the third petition for grant of regular bail in case FIR No.48, dated 26.02.2020, registered at Police Station Phillaur, District Jalandhar, under Section 22 of NDPS Act, 1985. The FIR was registered on account of recovery of 2350 intoxicating tablets which the FSL has found to be Tramadol Hydrochloride.

Learned counsel for the petitioner submits that the petitioner has been in custody for more than one and a half years. There is no other criminal case pending/decided against him. The trial is not likely to be concluded at an early date as examination of PWs has not yet started. Likelihood of conviction is very minimal because the search was conducted in the absence of a Gazetted Officer as is evident from consent memo (Annexure P-2). Even if there is consent, search has to be conducted in the presence of a Gazetted Officer as is evident from judgment dated 27.04.2018 passed by the Supreme Court in Criminal Appeal No.273 of 2007 titled as *Arif Khan @ Agha Khan vs. State of Uttarakhand*.

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Custody certificate dated 09/11.10.2021 has been submitted in Court. The same is taken on record. According to this certificate, the petitioner has undergone actual custody of 01 year, 07 months and 11 days and there is no other criminal case pending/decided against him.

Learned State counsel does not dispute the fact that examination of PWs has not yet started. He only submits that once there is consent, search need not be conducted in the presence of Gazetted Officer. He further states that recovery was made from a polythene bag and no personal search was conducted. For this reason also, there was no requirement of presence of Gazetted Officer.

In response, learned counsel for the petitioner refers to the consent memo (Annexure P-2) to submit that personal search was also done.

It is thus evident that the trial is not likely to be concluded at an early date. The petitioner has been in custody for 01 year, 07 months and 11 days. Likelihood of conviction is bleak in view of *Arif Khan case (supra)*.

Thus, the petition is allowed and the petitioner is directed to be released on regular bail on his furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned.

Nothing stated hereinabove shall be construed to be an opinion on the merits of the case.

October 11, 2021

Ankur

**(SUDHIR MITTAL)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No