

**212 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH
CRM-M-39007-2021
Date of Decision: 3rd December, 2021**

Kulwant Singh @ Raju

... Petitioner

Versus

State of Punjab

... Respondent

CORAM : HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Akhil Ahuja, Advocate for the petitioner.

Mr. V.G. Jauhar, Sr. DAG, Punjab for the respondent-State.

AVNEESH JHINGAN , J.(Oral)

1. Due to COVID-19 situation, the Court is convened through video conference.

2. This petition under Section 439 Cr.P.C. is filed seeking regular bail FIR No. 03, dated 6th January, 2021, under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act') registered at Police Station Arniwala, District Fazilka.

3. The brief facts are that police party received a secret information that Kulwant Singh @ Raju was indulged in selling intoxicating tablets. Acting upon the information, Kulwant Singh @ Raju was apprehended in village Ghatianwali Jattan, near Gang Canal Bridge. There was a recovery of eight hundred tablets of Clovidol-100SR and 22 strips consisting of 10 tablets each i.e. 220 tablets of Alprazolam IP-0.5 mg.

4. As per the FSL report, 253.86 grams of Tramadol and 32 grams of Alprazolam was recovered.

5. Learned counsel for the petitioner submits that petitioner is in custody since 6th January, 2021, while making recovery no independence witness was joined by the police party and there is non-compliance of Section 50 of the Act.

6. Learned State counsel opposes the prayer for grant of bail and submits that petitioner was earlier convicted in FIR No. 10, dated 30th January, 2011, Police Station Arniwala, Fazilka. He further submits that Section 50 of the Act was not applicable in the facts of the present case as the recovery was from the polythene bag held by the petitioner in his hand. He relies upon Section 37 to submit that petitioner is not entitled to bail as the recovery of commercial quantity and he was earlier involved in case under the Act and was convicted.

7. Recovery from the petitioner is of commercial quantity. Though the limit prescribed for Tramadol is 250 grams but apart from the Tramadol, 32 grams of Alprazolam was recovered.

8. The twin conditions of Section 37(1) (b) (ii) of the Act are not fulfilled. The non compliance of Section 50 of the Act is a debatable issue and would be subject matter of the trial. The custody period in itself cannot be a sole ground for grant of bail.

9. Dismissed.

10. However, it is clarified that nothing stated hereinabove shall be construed as an expression of opinion on the merits of the case.

(AVNEESH JHINGAN)
JUDGE

3rd December, 2021
Parveen Sharma