

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH
(207)**

**CRM-M-33909-2020
Date of decision:- 04.08.2021**

Sunil Kumar @ Sonu

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Navkiran Singh, Advocate
for the petitioner.

Mr. Sandeep Singh Deol, DAG, Punjab.

...

SUVIR SEHGAL, J. (ORAL)

The Court has been convened through video conferencing due to Covid-19 pandemic.

Petitioner has filed petition under Section 439 of the Code of Criminal Procedure, 1973 (for short “the Code”) for grant of regular bail in case FIR No.69 dated 12.08.2019 under Sections 22 and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “the NDPS Act”) (Section 29 the NDPS Act was added later on), registered at Police Station S.G.N. Dev Thermal Plant, Bathinda (Annexure P-1).

FIR (Annexure P-1) came to be registered on the basis of secret information that Sunil Kumar alias Sonu (petitioner herein), who is confined in Central Jail, Bathinda, in FIR No.100 dated 11.07.2019 registered for offence under Section 22 of the NDPS Act at Police Station

Maur, District Bathinda has stored a huge quantity of Narcotic Drugs in a godown of Transport Nagar, Bathinda.

Counsel for the petitioner contends that the petitioner, who was in custody when FIR (Annexure P-1) was lodged, was brought on production warrants and a recovery of 2,34,000 Tredol-100 tablets containing salt Tramadol Hydrochloride, was made from the godown of Kothari Transport, Bathinda. Counsel urges that the only incriminatory piece of evidence against the petitioner is the statement of Krishan Bansal (Annexure P-8) recorded under Section 161 of the Code wherein he had stated that co-accused Varinder Kumar came to the premises of the Transport Company enquiring about a consignment and when he was told that it has not been received, he said that the same will be collected by Sunil Kumar alias Sonu (present petitioner). Counsel submits that co-accused-Varinder Kumar has been ordered to be released on regular bail by this Court vide order dated 28.07.2021 passed in CRM-M-40428-2020. It is his contention that the consignment was sent in the name of M/s BMW Medicos, which is owned by one Narayan Dass, who has not been nominated as an accused by the prosecution. Still further he submits that the petitioner is a Chemist, and possess a valid licence (Annexure P-4) under the Drugs and Cosmetics Act, 1940. It is his argument that no recovery has been effected from the petitioner, investigation is complete, challan has been presented and the petitioner, who is in custody since 13.08.2019, deserves to be enlarged on bail.

Opposing the petition, learned State counsel, upon instructions

from ASI Kaur Singh, submits that the recovery of such a huge quantity of contra band, which falls within the ambit of commercial quantity, does not justify the release of petitioner on bail as the rigor of Section 37 of the NDPS Act is attracted. Still further, he submits that by virtue of notification issued on 29.07.2019, the Foods and Drugs Administration, Government of Punjab has specified that a special permission is required to possess Tramadol and Tapentadol beyond the quantity specified in the notification, which the petitioner does not have. As per his instructions, challan has been presented on 06.02.2020, charge has been framed on 24.03.2020, though the prosecution evidence is yet to start. He has also made a reference to the Custody Certificate to highlight the criminal antecedents of the petitioner as he is involved in eight cases out of which six cases have been registered against him for offences under the provisions of the NDPS Act and he stands acquitted in a case under the said Act.

I have considered the respective submissions of counsel for the parties.

The petitioner has been arraigned as an accused on the basis of a disclosure statement, the legality and veracity of which is yet to be tested. The petitioner is in incarceration for the last almost two years and the trial is yet to start. Co-accused, Varinder Singh has been released on bail and the case of the petitioner is on a better footing. In these circumstance, this Court is of the prima facie view that the petitioner deserves to be enlarged on bail.

Without commenting anything on the merits or demerits of the arguments raised by the counsel for the parties, the petition is allowed and the petitioner, namely, Sunil Kumar @ Sonu, is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate.

While being released on bail, the petitioner shall simultaneously submit an undertaking to the effect that henceforth, he will not indulge in sale or purchase of prohibited substance. In case, he violates the undertaking, it shall be open to the prosecution to seek cancellation of bail.

It is clarified that any observation made hereinabove shall not be construed to be a reflection of opinion on the merits of the case.

(SUVIR SEHGAL)
JUDGE

04.08.2021
Kamal

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No