

CRM-M-43884-2021 (O&M)

Through video conference

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

**CRM-M-43884-2021 (O&M).
Decided on: November 12, 2021.**

Kamal Kumar

.. Petitioner

VERSUS

State of Punjab

.. Respondent

*** * ***

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

*** * ***

**PRESENT Mr.Munish Raj Chaudhary, Advocate,
for the petitioner.**

Mr.Randhir Singh Thind, DAG, Punjab.

JASGURPREET SINGH PURI, J. (ORAL)

The present petition has been filed under Section 438 of the Code of Criminal Procedure, for grant of anticipatory bail in FIR No.63 dated 4.6.2021, registered under Sections 22, 25, 29, 61, 85 of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station, Barnala, District Barnala.

As per the FIR when the police was patrolling and checking the suspicious persons then a special informer came to the police

CRM-M-43884-2021 (O&M)

party and told that one Amandeep Singh @ Tili son of Balvir Singh resident of Bangla Patti Sheikhan who was habitual to sell the intoxicant tablets in village Farwahi and Sehelkha etc. by bringing the same from outside is coming on motorcycle No.PB-10DF-4626 from Barnala towards village Farwahi to sell the intoxicant tablets to the customers and that if barricading is fixed on the way and checking is conducted, said Amandeep Singh @ Tili can be caught on the above motorcycle along with intoxicant tablets. Thereafter, aforesaid Amandeep Singh @ Tili was apprehended by the police party and the police party recovered 200 strips of tablets make Celludol – 100 SR batch No.UFT.040 and a splendor motorcycle bearing registration Number PB-10-DF-4626. Thereafter, samples were drawn from the recovered quantity and duly sealed by the Court and one sample was sent to the Regional RTFSL Lab Bathinda where its contents were examined and it was found to be of Tramadol Hydrochloride by the expert each tablet having average weight 355.91 mg/tablet and was having average quantity of the ingredient as 98.96 mg/tablet. The total weight of tablets came to be 711.82 grams which falls under the category of commercial quantity.

Learned counsel for the petitioner has submitted that the name of the petitioner was not mentioned in the FIR and it was only on the basis of disclosure statement of co-accused that name of the petitioner was nominated and that the petitioner is not involved in any other case. He further submitted that since no recovery is effected from the petitioner and he has clean antecedents, he may be considered for the grant of anticipatory

bail.

On the other hand, Mr.Thind, learned Deputy Advocate General, Punjab, has submitted that a detailed reply has been filed by the Deputy Superintendent of Police, Sub Division, Barnala and while referring to the aforesaid affidavit, he has submitted that it is correct that the petitioner has not been named in the FIR and his name has been nominated on the basis of disclosure statement but the facts and circumstances of the present case would dis-entitle the petitioner for grant of anticipatory bail. He submitted that when accused Amandeep Singh @ Tili who was caught on the spot with the contraband was taken on police remand, disclosed during interrogation that due to Covid – 19 pandemic, he could not get any job and started selling intoxicant tablets and further disclosed that these tablets were brought by him from one Veer Bhadar son of Vijay Kumar residing near Shiv Math Barnala, Lakhwinder Singh @ Bunty and Kamal Kumar son of Raj Kumar (petitioner) and used to sell these intoxicant tablets. The aforesaid three accused were named as additional accused under Section 29 of the NDPS Act vide DDR No.14 dated 6.6.2021, Police Station, Barnala. Thereafter, aforesaid Kala Singh disclosed that all the aforesaid accused namely Veer Bhadar, Lakhwinder Singh @ Bunty and Kamal Kumar (petitioner) met him and told him that they were selling intoxicant tablets and the same could be made available to him as well as to the labourers working with him but the offer was not accepted by him and he advised the said accused to give up such activities. Thereafter, during further course of investigation on 21.7.2021, the police arrested co-accused

CRM-M-43884-2021 (O&M)

Veer Bhadar Singh @ Kalu who was present at link road and 125 strips each containing 10 tablets of Celludol – 100 SR Batch No.UFT.40 manufactured in India by Unique Formulations Paonta Sahib H.P. and marketed by Gajanand Pharma A-1 Park Plaza, Bandra, Mumbai were recovered. The samples were drawn and were sent to the Regional FSL Lab Bathinda where its contents were examined and found to be of Tramadol Hydrochloride by the expert with each tablet having average weight 357.80 mg/tablet and was having average quantity of the ingredient as 99.20 mg/tablet. The total weight of the 1250 tablets came to be 447.20 grams which is also commercial quantity. Aforesaid Veer Bhadar Singh who was interrogated also disclosed that he was doing this business along with Lakhwinder Singh @ Bunt and Kamal Kumar (petitioner) and they had bought the said tablets from auto rickshaw driver at Delhi and out of which some tablets were taken away by Amandeep Singh @ Tili who was arrested on the spot by the police.

Learned State counsel while referring to the affidavit further submitted that petitioner is a member of gang comprising of Amandeep Singh @ Tili, Veer Bhadar Singh and Lakhwinder Singh and total contraband recovered from them was $2000 + 1500 = 3250$ tablets of Tramadol hydrochloride and therefore, the petitioner was liable under Section 29 of the NDPS Act. He further submitted that although the petitioner was nominated on the basis of disclosure statement but that itself cannot become a ground for the grant of anticipatory bail to the petitioner when there is other sufficient material available on record to show that the

CRM-M-43884-2021 (O&M)

petitioner was involved in the offence. He submitted that chain of supply of contraband needs to be ascertained by way of custodial investigation. He submitted that accused Amandeep Singh @ Tili who was caught on the spot had nominated three persons namely Veer Bhadar Singh, Lakhwinder Singh and the present petitioner Kamal Kumar. Tablets of contraband of commercial quantity were recovered from Veer Bhadar Singh after his arrest and on the basis of disclosure statement of Veer Bhadar Singh two more persons were nominated namely Parveen Kumar and Mohit Kumar and from Parveen Kumar 140 strips each strip containing 10 tablets total 1400 intoxicant tablets of Tramadol SR 100 and 1000 loose intoxicant tablets were recovered. Furthermore, from the aforesaid Mohit Kumar although no recovery was made but on his disclosure statement one Sandeep Kumar was nominated from whom 72 capsules of proxywel spas were recovered and he was also involved in another FIR under the NDPS Act. He submitted that chain of sequence of events would show that it will be necessary to further investigate the case by way of custodial investigation of the petitioner. He submitted that case is still at the investigation stage and therefore, the custody of the petitioner would be required for interrogation.

Learned State counsel has further submitted that the quantity involved in the present case is of commercial nature and the case of the present petitioner is also hit by the bar contained under Section 37 of the NDPS Act. He has submitted that in case the petitioner is granted anticipatory bail then there is every likelihood that he may abscond and may hamper the investigation process since the case is still at initial stage and

therefore, he has prayed for dismissal of the present petition.

I have heard the learned counsel for the parties.

Although the case of the petitioner is that he was not named in the FIR and his name has been nominated on the basis of disclosure statement which is not admissible in evidence and no recovery has been effected from the petitioner but that itself cannot become a ground for the grant of anticipatory bail to the petitioner when there is other sufficient material available on the record to show that on further disclosure statements by different persons large contraband was confiscated. The aforesaid factual position stated by the learned State counsel shows that from the main accused namely Amandeep Singh @ Tili who was apprehended on the spot 2000 tablets of Tramadol hydrochloride were recovered and he disclosed the name of Veer Bhadar Singh, Lakhwinder Singh and present petitioner Kamal Kumar. On the disclosure statement of Veer Bhadar Singh, he got recovered 1520 tablets of Tramadol hydrochloride which is a commercial quantity and on his disclosure statement two more persons were nominated namely Parveen Kumar and Mohit Kumar. Further contraband was recovered from Parveen Kumar and on the basis of disclosure statement made by Mohit Kumar, another person namely Sandeep Kumar was nominated from whom 72 capsules were recovered and he was also involved in one other case under the NDPS Act. Therefore, this Court is of the opinion that for the purpose of elicitation of truth, custodial interrogation of the petitioner would certainly be required. Furthermore, the alleged recovery from accused Amandeep Singh @ Tili

CRM-M-43884-2021 (O&M)

was of commercial quantity and on further disclosure statement when other co-accused were arrested, again recoveries were made which were commercial in nature. Learned counsel for the petitioner has not been able to make out any ground for making departure from the bar contained under Section 37 of the NDPS Act. Furthermore, the submissions made by the learned State counsel that in view of the facts and circumstances of the present case in case the petitioner is released on anticipatory bail then he may abscond which may ultimately hamper the investigation process does carry some weight. Therefore, considering the totality of the circumstances of the present case, this Court does not deem it fit and proper to grant the concession of anticipatory bail to the petitioner. Consequently, the present petition is hereby dismissed.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant only for the purpose of decision of present petition.

November 12, 2021.
raj arora

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking / reasoned
Whether reportable

Yes / No
Yes / No