

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

**CRM-M No.52712 of 2018
Date of Decision : 11.10.2021**

Karandeep Sharma

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM : HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present : Mr. Bipan Ghai, Senior Advocate assisted by
Mr. Deepanshu Mehta, Advocate
for the Petitioner.

Mr. B.S. Sewak, Addl. Advocate General, Punjab
for the Respondent/State.

SUDIP AHLUWALIA, J. (ORAL)

The instant Petition has been filed under Section 439 of the Code of Criminal Procedure seeking Regular Bail on behalf of the Petitioner in case FIR No.57, dated 3rd July, 2018, registered under Sections 21, 22, 29 of the NDPS Act, 1985, at Police Station Gharinda, District Amritsar Rural.

2. The Petitioner has by now remained in detention for more than 3 years since 3rd July, 2018.

3. According to the FIR, 40,000 intoxicant tablets without label, Bill and Licence were recovered from the conscious possession of the Petitioner on the relevant date. The same were subsequently found to contain Tramadol salt.

4. Contention of the Petitioner in this regard is that he is a Licensed Chemist and had regular Licence for his Proprietorship Firm under

the name and style of M/s C.K. Pharmaceuticals. A copy of the relevant Licence has been placed on record in the form of Annexure P-5 which is a part of the Communication No. Drugs(5) Pb.2015/7646 dated Chandigarh 24.3.2015 sent to him by the Food & Drugs Administration, Punjab.

5. From the aforesaid Communication it is seen that the original Licence of the Firm was issued from the period 10th March, 2015 to 9th March, 2020 under Licence No.24940-W, and the constitution of the Proprietorship Firm shows the Petitioner to be a Partner of the same along with his father Sh. Shamsheer Jang Bahadar Sharma.

6. Ld. Counsel for the Petitioner has also drawn attention of the Court to the fact that “Tramadol” was initially originally not covered under the NDPS Act before the relevant Notification of the Ministry of Finance, Department of Revenue, Govt. of India was issued on 26th of April, 2018 (Annexure P-3) vide which Tramadol was included at Sr. No.238 ZH of the Schedule to the NDPS Act, 1985. However, on 13th July, 2018 another Notification vide SO No.3448(E) was issued by the Ministry of Finance, Department of Revenue by virtue of which it was provided that, *“The licensed manufacturers, importers and exporters of Tramadol shall be covered under the provisions of this notification after the expiry of a period of 120 days from the date of its publication in the Official Gazette”*. It would therefore mean that inclusion of Tramadol in the prohibited list under the NDPS Act would become effective 120 days after the date of original notification i.e. 25th August, 2018.

7. In other words on the relevant date of recovery (3rd July, 2018)

the inclusion of Tramadol in such prohibited list had not actually come into effect inspite of the original Notification dated 26th April, 2018, since its effect was deferred for a period of four months thereafter.

8. It has also been highlighted on behalf of the Petitioner that co-accused Bharat Bhushan as also Rajan Bhardwaj and Rajiv Bhardwaj, Directors of the Company – “M/s Willmark Pharmaceuticals Pvt. Ltd.” from whom the Petitioner had apparently purchased the disputed contraband have already been granted bail long ago by different Benches of this Court in CRM-M No.51620 of 2018 and CRWP No.632 of 2018 and CRM-M No.31301 of 2018.

9. Further, trial in the case is yet to start. Even the Charges have not been framed and the matter is stated to be fixed on 3rd of November this year for that purpose alone.

10. In the totality of the aforesaid circumstances, further detention of the Petitioner for an indefinite period, after he has already remained incarcerated for over 3 years, at this stage, is certainly not called for. He is therefore permitted to be now released on bail subject to appropriate terms and conditions to the satisfaction of the Ld. Trial Court/ Duty Magistrate concerned.

11. Disposed off.

October 11, 2021

Dpr

**(SUDIP AHLUWALIA)
JUDGE**

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No