IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRM-M-906-2020
Date of decision: 14.01.2021

Jorawar Singh .....Petitioner

Versus

State of Punjab .....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Tarun Singla, Advocate
for the petitioner.

Mr. Rana Harjasdeep, DAG, Punjab
for the respondent-State.

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ARUN KUMAR TYAGI, J (ORAL)

(The case has been taken up for hearing through video conferencing.)

The petitioner has filed the present (first) petition under Section 439 of the Code of Criminal Procedure, 1973 (for short, "the Cr.P.C.") for grant of regular bail in case FIR No.288 dated 11.09.2019 registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, “the NDPS Act”) at Police Station Talwandi Sabo, District Bathinda.

As per the prosecution version the police party headed by SI Gurpreet Singh Nahel was present at T-point Gurusar Jagga, Talwandi Sabo, Raman Road for patrolling duty. The petitioner came from the side of Village Gurusar Jagga and on seeing the police party threw the polythene bag/envelope held in his hand and tried to return. The petitioner was apprehended and on search 40 strips having 10 tablets each totaling 400 tablets make Tredol-100Tramadol-

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Hydrochloride Tablets-100 MG from polythene bag thrown on the road. Pursuant to registration of FIR, the police investigated the case and charge-sheeted the accused.

The petitioner being in custody has filed the present petition for grant of regular bail.

The petition has been opposed by learned State Counsel in terms of reply filed by way of affidavit of Narinder Singh, PPS, Deputy Superintendent of Police, Sub Division Talwandi Sabo.

I have heard learned Counsel for the petitioner and learned State Counsel and gone through the relevant record.

Learned Counsel for the petitioner has argued that the petitioner has been falsely implicated in the case. Recovery was allegedly made from plastic bag/envelope thrown on the road side and the petitioner cannot be said to be in conscious possession thereof. Mandatory provisions of the NDPS Act were not complied with. No sample was drawn out of the intoxicating tablets. Batch number, name of manufacturer and other details of all the strips were not mentioned. The FSL report cannot be said to be based on representative sample of entire quantity. Rigors of Section 37(1)(b) of the NDPS are not applicable qua the petitioner. The petitioner is not involved in any other case under the NDPS Act. Trial is likely to take long time and no useful purpose will be served by his further detention in custody. Therefore, the petitioner may be ordered to be released on bail. In support of his arguments, learned Counsel for the petitioner has placed reliance on the observations in ***CRM-M-963-2020 titled as 'Sanjay Kumar Tari Vs. State of Punjab' decided on 01.12.2020; CRM-M-13662-2020 titled as***

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'Niranjan Kumar @ Kaka Vs. State of Punjab' decided on 06.07.2020; CRM-M-14474-2020 titled as 'Dharminder Singh Vs. State of Punjab' decided on 24.06.2020; CRM-M-21020-2020 titled as 'Amritpal Singh Lamberdar Vs. State of Punjab' decided on 11.08.2020; CRM-M-6433-2018 titled as 'Pawan Kumar Vs. State of Punjab' decided on 23.02.2018; CRM-M-16380-2020 titled as 'Buta Singh Vs. State of Punjab' decided on 13.08.2020; CRM-M-16960-2020 titled as 'Hardeep Singh Vs. State of Punjab' decided on 16.07.2020 and ***'Chitta Biswas @ Subhash Vs. State of West Bengal' Criminal Appeal No.245 of 2020 SLP (Criminal) No.8823 of 2019***.

On the other hand, learned State Counsel has argued that the petitioner kept in conscious possession 40 strips having 10 tablets each totaling 400 tablets make Tredol-100Tramadol-Hydrochloride Tablets-100 MG which fell in the category of commercial quantity. The petitioner does not deserve the concession of regular bail. Therefore, the petition may be dismissed.

However learned State Counsel has conceded that the petitioner is not involved in any other case under the NDPS Act.

In ***CRM-M-13662-2020 titled as 'Niranjan Kumar @ Kaka Vs. State of Punjab' decided on 06.07.2020; CRM-M-14474-2020 titled as 'Dharminder Singh Vs. State of Punjab' decided on 24.06.2020; CRM-M-21020-2020 titled as 'Amritpal Singh Lamberdar Vs. State of Punjab' decided on 11.08.2020; CRM-M-6433-2018 titled as 'Pawan Kumar Vs. State of Punjab' decided on 23.02.2018*** and ***CRM-M-16380-2020 titled as 'Buta Singh Vs. State of Punjab' decided on 13.08.2020*** where recovery of

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narcotic/psychotropic drug/substance was made from bag allegedly thrown on the road side by the petitioner, the case was considered to involve question as to whether the petitioner could be said to be in conscious possession and the petitioner was granted regular bail.

In ***'Chitta Biswas @ Subhash Vs. State of West Bengal' Criminal Appeal No.245 of 2020 SLP (Criminal) No.8823 of 2019 decided on 07.02.2020*** where recovery of 46 bottles of phensydryl cough syrup containing codeine mixture above commercial quantity was made from the accused who was in custody since 21.07.2018 and out of 10 prosecution witnesses only 4 prosecution witnesses had been examined, the accused was granted bail by Hon'ble Supreme Court.

In the present case recovery of 400 tablets was allegedly made from polythene bag/envelope allegedly thrown on the road side by the petitioner and the case involves debatable question as to whether the petitioner can be said to be in conscious possession thereof. The petitioner is not involved in any other case under the NDPS Act. Rigors of Section 37(1)(b) of the NDPS Act stand satisfied by due implication. The petitioner is in custody since 11.09.2019. Out of 12 prosecution witnesses none has been examined so far. The trial is likely to take long time due to restrictions imposed to prevent spread of Covid-19.

In view of the above referred judicial precedents and facts and circumstances of the case but without commenting on the merits of the case, I am of the considered view that the petitioner deserves the concession of regular bail.

Therefore, the petition is allowed and the petitioner is ordered to be released on regular bail on furnishing of bail bonds to the

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satisfaction of the trial Court/Duty Magistrate/Chief Judicial Magistrate concerned.

However, bail is granted to the petitioner subject to the condition that he will not commit any offence under the NDPS Act after his release on bail and in case of involvement of the petitioner in commission of any offence under the NDPS Act in future, his bail in the present case shall also be liable to be cancelled on application to be filed in this regard.

14.01.2021 (**ARUN KUMAR TYAGI**)
Vinay **JUDGE**

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

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