

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

**CRM-M-383-2022 (O&M)
Date of decision: 24.03.2022**

Sachin Kumar**...Petitioner**

Versus

State of Punjab**...Respondent****CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN**

Present:- Mr. Rajesh Bhatheja, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN, J. (Oral)

This is the second petition that has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No. 137 dated 25.09.2019, registered under Sections 22, 29 of the NDPS Act, 1985 at Police Station City Jalalabad, District Fazilka.

Learned counsel for the petitioner, at the very outset, relies upon order dated 06.02.2020 passed in CRM-M-4267-2020, vide which co-accused Sahil Kumar @ Gaurav Kumar @ Gora has already been granted the concession of regular bail by this Court. The operative part of the order reads as under:

“Counsel for the petitioner has argued that as per the allegations in the FIR, registered at the instance of ASI Ramesh Kumar, when he along with other police officials, were checking the vehicle at a barrier and one motorcycle driven by a person carrying some black colour envelope on the tank of the motorcycle was seen. On seeing the police party, he became perplexed and tried to turn his motorcycle and due to opening of the

mouth of the envelope, some tablets fell down on the ground. Thereafter, the Investigating Officer and his fellow police officials caught hold of him and thereafter, he disclosed his name as Chhinder Singh and on checking the strips, it was found to be Tramadol Hydrochloride. On enquiry, he had told that he had purchased the same from one Avneesh Kumar and thereafter, Chhinder Singh was arrested and the FIR was registered against him as well as Avneesh Kumar. It is further stated that, later on, Avneesh Kumar was arrested on 26.09.2019 and he informed that he has procured the tablets from one Sachin. Thereafter, Sachin was arrested and he has made a disclosure statement that he has procured the same from one Sahil Kumar i.e. the present petitioner. When the petitioner was arrested, he informed that the same were purchased from Shakti Medical Store, Kapurthala.

Counsel for the petitioner has further argued that the petitioner is not involved in any other case and even after his arrest and on recording the disclosure statement, no further recovery was effected from him. Counsel for the petitioner has, thus, argued that it will be a debatable issue to be decided during the course of trial whether the petitioner was found to be in conscious possession of the tablets recovered from the co-accused Chhinder Singh, who was arrested at the spot.

Counsel for the State has filed the Custody Certificate today in the Court and on instructions from HC Harpal Singh, submits the petitioner is not involved in any other case as per the Custody Certificate.

Counsel for the State has also not disputed the sequence of the disclosure statements made by the co-accused, which led to arrest of one after the other and further, could not dispute the fact that after the arrest of

the petitioner, no recovery was effected from him.”

For the sake of brevity, the facts are not reproduced again.

Learned counsel for the petitioner submits that the petitioner was nominated on the disclosure of co-accused Sachin, who was nominated on the disclosure of main accused Avneesh Kumar, from who the recovery was effected.

Learned counsel further submits that after the arrest of the petitioner, nothing was recovered from him to substantiate the disclosure made by aforesaid co-accused.

Learned counsel further submits that in view of the judgments rendered by Hon'ble Supreme Court in *Tofan Singh vs. State of Tamil Nadu, (2021) 4 SCC 1* and *State By (NCB) Bengaluru vs. Pallulabid Ahmad Arimutta & Anr. 2022 Live Law (SC) 69*, it will be a matter of trial whether the disclosure of a co-accused is admissible against the petitioner or not.

Learned counsel for the petitioner further submits that the petitioner was granted the concession of interim bail awaiting the FSL report and after the receipt of the report, he has surrendered back and is in judicial custody.

Learned State counsel, on the basis of the custody certificate filed today in Court has not disputed the fact that the petitioner is in judicial custody for the last about 06 months after surrendering back on the receipt of FSL report.

I have heard learned counsel for the parties.

Without commenting upon the merits of the case, considering the fact that the petitioner is in judicial custody for the last about 06 months

after surrendering back on the receipt of the FSL report; a co-accused has already been granted the concession of regular bail as noticed above and also in view of the ratio of law laid down by Hon'ble Supreme Court in aforesaid judgments, the instant petition is allowed. The petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate/Illaq Magistrate, concerned.

24.03.2022

Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No