

CRM-M-6270-2022

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

CRM-M-6270-2022

Judgment reserved on: 04.08.2022

Pronounced on: 10.08.2022

Hans Raj @ Neela

...Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present:- Mr. Kewal Krishan, Advocate,
for the petitioner.

Mr. Harbir Sandhu, AAG, Punjab.

HARNARESH SINGH GILL, J.

Through this petition, the petitioner seeks regular bail in case FIR No. 97 dated 06.08.2021, registered at Police Station Sadar Balachaur, District SBS Balachaur, under Section 22 NDPS Act.

Learned counsel for the petitioner has contended that there was a family dispute between the petitioner and his wife and that at the instance of his wife, the petitioner was falsely implicated in the present case; that the alleged recovery had not been effected from the personal search of the accused; that there was no independent witness joined at the time of the alleged recovery of the intoxicating tablets, and that there was no compliance of provisions of Section 50 NDPS Act.

Learned counsel for the petitioner has further contended that there is no other case registered or pending against the petitioner, and that the petitioner has been in custody for more than 10 months. In support of

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his contentions, learned counsel has relied upon the judgments rendered by the Hon'ble Supreme Court in Bharat Chaudhary Vs. Union of India, Special Leave to Appeal (Crl.) No.5703-2021, on 13.12.2021, and State of West Bengal Vs. Rakesh Singh @ Rakesh Kumar Singh, Criminal Appeal No.923 of 2022, on 11.07.2022, and the judgments rendered by the Coordinate Benches in Ankush Kumar @ Sonu Vs. State of Punjab 2018(4) R.C.R. (Criminal) 84 and Pankaj vs. State of Punjab, CRM-M-25498-2021, decided on 14.06.2022.

On the other hand, learned State counsel, while opposing the grant of bail to the petitioner, has submitted that recovery of intoxicating tablets effected from the petitioner, falls under the commercial quantity; that the case of the petitioner is hit by the bar contained in Section 37 NDPS Act, and that there was total compliance of provisions envisaged under the NDPS Act.

I have heard the learned counsel for the parties.

As per the case of prosecution, on 06.08.2021, 08 strips containing 10 tablets each make Rolin 0.5, total 80 intoxicating tablets were recovered from a small polythene bag thrown by the petitioner. As per the report of FSL, Ludhiana, the average weight of each tablet was 127 mg.; the substance recovered in the said tablets was Etizolam, and total weight of the recovered intoxicating tablets, each containing Etizolam, comes out to be 10.16 grams, which falls under the commercial quantity. Section 37 NDPS Act bars the grant of bail to the accused in case of commercial quantity.

So far as the judgment of the Hon'ble Apex court in Bharat

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Chaudhary's case (supra) is concerned, suffice to say that the said case has its peculiar facts, which have been noticed in para No.10 of the judgment, that would read as under:

10. After carefully examining the arguments advanced by learned counsel for the parties and having cursorily glanced at the records, we are of the opinion that the impugned order cancelling the bail granted in favour of Bharat Chaudhary [A-4], is not sustainable in view of the fact that the records sought to be relied upon by the prosecution show that one test report dated 6th December, 2019, two test reports dated 17th December, 2019 and one test report dated 21st December, 2019 in respect of the sample pills/tablets drawn and sent for testing by the prosecuting agency conclude with a note appended by the Assistant Commercial Examiner at the foot of the reports stating that “quantitative analysis of the samples could not be carried out for want of facilities”. In the absence of any clarity so far on the quantitative analysis of the samples, the prosecution cannot be heard to state at this preliminary stage that the petitioners have been found to be in possession of commercial quantity of psychotropic substances as contemplated under the NDPS Act. Further, a large number of the tablets that have been seized by the DRI admittedly contain herbs/medicines meant to enhance male potency and they do not attract the provisions of the NDPS Act. Most importantly, none of the tablets were seized by the prosecution during the course of the search conducted, either at the office or at the residence of A-4 at Jaipur, on 16th March, 2020. Reliance on printouts of Whatsapp messages downloaded from the mobile phone and devices seized from the office premises of A-4 cannot be treated at this stage as sufficient material to establish a live link between him and A-1 to A-3, when even as per the prosecution, scientific reports in respect of the said devices is still awaited.”

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However, in the present case, it is the specific case of the State that the intoxicating tablets recovered from the petitioner, falls under the commercial quantity. Moreover, in the present case, the petitioner has remained in custody only for a period of 10 months and 22 days and the report of FSL has been received, but in Bharat Chaudhary's case (supra), the petitioner therein had remained in custody for over a period of 02 years and some scientific reports were awaited.

So far as the judgment of the Hon'ble Supreme Court in Rakesh Singh's case (supra) is concerned, the same is not applicable to the present case having distinguishable facts, for the reason that in the said case, applicability of Section 27-A NDPS Act was seriously questionable and there being no recovery from the respondent therein and the quantity in question was also intermediate. However, in the present case, the petitioner was apprehended at the spot and the recovery of intoxicating tablets effected from a polythene bag thrown by him, falls under the commercial quantity.

So far as the Coordinate Benches' orders relied upon by the learned counsel for the petitioner, are concerned, the same are prior to the various rulings of the Hon'ble Apex Court, wherein a considerable period of custody is mandated before considering the pleas of the accused for grant of bail.

In Special Leave to Appeal (Crl.) No.5507/2020 – Jamshed Alam @ Jamsher Alam Vs. The State of Jharkhand, vide order dated 29.10.2021, the Hon'ble Apex Court was pleased to order the release of the accused therein on bail, only after he had undergone custody period of

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more than 3 years.

Moreover, in Criminal Appeal Nos.1001-1002 of 2022, titled as 'Narcotics Control Bureau Vs. Mohit Aggarwal' vide order dated 19.07.2022, the Hon'ble Supreme Court has held that length of the period of custody of the accused or the fact that the charge-sheet has been filed and the trial has commenced are by themselves not considerations that can be treated as persuasive grounds for granting relief to the accused under Section 37 NDPS Act.

Keeping in view the fact that the extent of intoxicating tablets recovered from the petitioner, falls under the commercial quantity, this Court finds that the case of the petitioner is hit by the bar contained under Section 37 NDPS Act.

Therefore, finding no merit in the present petition, the same is dismissed.

10.08.2022

parveen kumar

**(HARNARESH SINGH GILL)
JUDGE**

Whether reasoned/speaking?

Yes/No

Whether reportable?

Yes/No