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

CRM-M-16537-2022

Date of decision: 28.04.2022

LUXMI @ MALA AND ANR.

...Petitioners

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. R.S. Waraich (Rana), Advocate
for the petitioners.

Mr. Bhupender Beniwal, AAG, Punjab

SURESHWAR THAKUR, J. (ORAL)

1. In FIR bearing No.219 of 26.11.2021, registered at Police Station City-II Khanna, District Ludhiana, an offence constituted under Section 22/61/85 of the NDPS Act, is embodied.

2. The bail applicants-petitioners were occupant of the non-driving seat of a Santro car bearing No. PB-25-C-5298. The above car was being driven, at the relevant time, by the principal offender/co-accused. The investigating officer concerned, upon making search of the afore car, recovered therefrom 100 grams of intoxicant powder, and, 110 intoxicant tablets.

3. Without delving into the factum of the present bail petitioners occupying the non-driving seat of the car concerned, and, it purportedly not bringing against them, any incriminatory role, in FIR (supra) rather the relevant fact which requires to be determined in the instant bail petition, appertains to whether the FSL concerned, whereto the sample of the seizure

became sent for analysis, making an echoing in the apposite report qua a prohibited salt or a prohibited narcotic drug, rather becoming found thereins.

4. In that respect, the FSL report appertaining to the afore fact, whereto Annexure P-2, becomes assigned, rather becomes relevant.

5. The relevant portion of the opinion, made on the samples concerned, as became sent to the chemical analyst, portion whereof becomes extracted hereinafter, does reveal, that insofar as the sample appertaining to 100 grams of intoxicant powder is concerned, the chemical analyst concerned, making an opinion that there was complete absence(s) thereins, of the prohibited psychotropic salts.

<i>“Parcel No. 1:</i>	
<i>Morphine</i>	<i>Found absent</i>
<i>Diacetyl Morphone</i>	<i>-do-</i>
<i>Codeine</i>	<i>-do-</i>
<i>Cocaine</i>	<i>-do-</i>
<i>Amphetamine</i>	<i>-do-</i>
<i>Diphenoxylate Hydrochloride</i>	<i>-do-</i>
<i>Tramadol Hydrochloride</i>	<i>-do-</i>
<i>Buprenorphine Hydrochloride</i>	<i>-do-</i>
<i>Dextropropoxyphene Hydrochloride</i>	<i>-do-</i>
<i>Diazepam</i>	<i>-do-</i>
<i>Lorazepam</i>	<i>-do-</i>
<i>Alprozolam</i>	<i>-do-</i>
<i>Nitrazepam</i>	<i>-do-</i>
<i>Clonazepam</i>	<i>-do-</i>
<i>Chlordiazepoxise Hydrochloride</i>	<i>-do-</i>

<i><u>Parcel No. 2</u></i>	
<i>Ingredient Present</i>	<i>Average quantity of ingridient in the parcel</i>
<i>Tramadol Hydrochloride</i>	<i>96.37 mg/tablets”</i>

6. Therefore, it is not deemed, fit and, appropriate to either determine weights thereof, nor it is deemed, fit and, appropriate to determine whether the rigours of Section 37 of the NDPS Act, are applicable thereons.

7. However, insofar as the analysis made on sample parcel No. 2, enclosing therein sample of 110 intoxicant tablets is concerned, the analyst has made an opinion that each contained Tramadol Hydrochloride, hence a prohibited psychotropic salt.

8. Be that as it may, the learned State counsel, has fairly stated, at the bar, that the gross weight of 110 seized tablets containing therein the above prohibited salt, makes them fall within the ambit of non-commercial quantity thereof. Therefore, the rigours of Section 37 of the NDPS Act, are not applicable to the gross weight of the afore seizure. Hence, the bail applicants-petitioners become entitled to be admitted to regular bail.

9. Consequently, the instant petition is allowed, and, the petitioners-bail applicants are ordered to be released from judicial custody. However, the granting of bail to the bail applicants-petitioners, is subject to theirs furnishing personal and surety bonds in the sum of ₹50,000/- each, before the learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned, and, also subject to theirs not tampering with prosecution evidence, and, theirs not influencing prosecution witnesses, and, besides also theirs appearing before the trial Court concerned, as and when directed to make their personal appearance, unless validly exempted.

10. Copy dasti.

(SURESHWAR THAKUR)
JUDGE

28.04.2022