

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

CRM-M No.22598 of 2021

Date of Decision: 27-01-2022.

Sandeep Kumar

.....Petitioner.

Versus

State of Punjab

.....Respondent.

CRM-M No.29457 of 2021

Amit Sharma alias Makhan

.....Petitioner

Versus

State of Punjab

.....Respondent

CRR No.746 of 2021

Sandeep Kumar

.....Petitioner

Versus

State of Punjab

.....Respondent

(Heard through Video-Conferencing)

CORAM: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present:- Mr. Keshavam Chaudhari, Advocate
for the petitioner (in CRM-M No.22598 of 2021 & CRR
No.746 of 2021).

Mr. Parminder Singh Sekhon, Advocate,
for the petitioner (in CRM-M No.29457 of 2021).

Ms. Samina Dhir, Deputy Advocate General, Punjab.

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MEENAKSHI I. MEHTA, J.

All the three afore-mentioned petitions are being taken up
together for discussion and adjudication as these have arisen out of the

same FIR bearing No.21 dated 13.04.2021 registered at Police Station Rureke Kalan, District Barnala, under Sections 22, 25 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act').

2. Shorn and short of unnecessary details, the allegations, as levelled in the present case, are that on 13.04.2021, on receipt of a secret information regarding three persons namely Yogesh Kumar @ Sonu, Gurdeep Singh and Puneet Kumar, having been indulging in the sale of intoxicant tablets in the village after procuring the same from outside, the police party, headed by SI/SHO Paramjit Singh, held 'Naka' (put up the barricades) at bus stand on Mehta Road. After some time, the above-named three persons were seen coming on a motor-cycle and were apprehended. On being served the notices under Section 50 of the Act, they opted to get the search conducted by the Gazetted Officer. Thereafter, Deputy Superintendent of Police, Sub Division Tapa, reached at the spot. The search of the polythene envelope carried by accused-Gurdeep Singh in his right hand, resulted in the recovery of 100 strips, each containing 10 Clovidol-100 SR tablets, i.e total 1000 tablets whereas the search of the cloth-bag hung by accused-Yogesh Kumar @ Sonu on his right shoulder, led to the recovery of 250 strips, each containing 10 Clovidol 100-SR tablets, i.e 2500 tablets and 95 strips, each containing 10 Celcidal 100-SR tablets, i.e 950 tablets and accused Puneet was found to be carrying 1000 strips, each containing 10 Clovidol-100 SR tablets, i.e 10000 tablets and 100 strips, each containing 10 Celcidal-100 SR tablets, i.e 1000 tablets, in

the bag hung by him on his shoulder. During their interrogation, the afore-named accused suffered the disclosure statements regarding the said contraband having been supplied to them by petitioner-Sandeep Kumar and in pursuance thereof, he (Sandeep Kumar) was apprehended and 1500 Clovidol 100-SR tablets, packed in 150 strips (each containing 10 tablets) and 600 white colour loose intoxicant tablets were recovered at his instance. He suffered a disclosure statement and on the basis of the same, petitioner Amit Sharma @ Makhan was also nabbed and he also made a disclosure statement and got 300 white colour loose intoxicant tablets recovered/discovered in pursuance of the same.

3. Petitioner-Sandeep Kumar moved an application before the Court below for claiming the statutory bail under Section 167(2) Cr.P.C. while pleading that as per the FSL report, the afore-said 1500 tablets, as allegedly recovered from him, contained 'Pregabalin' which did not fall within the purview of the Act and the total weight of 600 loose tablets, reportedly containing 'Tramadol Hydrochloride' Salt, came out to be 242.088 gms which was 'non-commercial/intermediate' quantity and the Challan had not been presented in the Court within the stipulated period. However, the Special Court dismissed the above-said application vide the order dated 12.07.2021 and CRR No.746 of 2021 has been preferred by the afore-named petitioner to assail the above-said order and he has also sought the relief of regular bail vide CRM-M No.22598 of 2021 whereas petitioner Amit Sharma @ Makhan has also prayed for the same relief in CRM-M No.29457 of 2021.

4. The respondent-State has already filed separate status-reports in CRR No.746 of 2021 and CRM-M No.22598 of 2021 and written Reply in CRM-M No.29457 of 2021. However, it is pertinent to mention here that while mentioning the details of the FSL report in the said status-reports/Reply, the tablets, mentioned in the earlier paras therein as 'Clovidol-100 SR' tablets, have been described as 'CLAVIDOL-100 SR' tablets.

5. I have heard learned counsel for petitioner-Sandeep Kumar in CRM-M No.22598 of 2021 & CRR No.746 of 2021 and learned counsel for petitioner-Amit Sharma @ Makhan in CRM-M No.29457 of 2021 as well as learned State counsel in all these petitions and have also perused the files thoroughly.

6. Learned counsel for petitioner-Sandeep Kumar has pointed out that as per Annexure P-7, i.e the report of RTFSL, Bathinda (in CRM-M No.22598 of 2021), the sample of 'CLAVIDOL 100-SR' tablets, allegedly recovered from the above-named petitioner, was found to be containing 'Pregabalin' and the sample of the loose intoxicant tablets, as alleged to have been recovered from him, contained 'Tramadol Hydrochloride' and the average weight of these loose tablets is reported to be 403.48 mg and he has contended that the salt 'Pregabalin', as reportedly found in said 1500 'CLAVIDOL-100 SR' tablets, does not fall within the purview of the Act and the total weight of the said 600 loose tablets, comes out to be 242.088 gms which is less than the commercial quantity of the said salt (Tramadol Hydrochloride), i.e 250 gms and the petitioner is behind the bars since the

day of his arrest, i.e 15.04.2021 and in these circumstances, he deserves the relief as prayed for in CRM-M No.22598 of 2021 and in the alternative, he is entitled to the default bail also as sought in CRR No.746 of 2021 because the Investigating Agency failed to present the Challan against him within the prescribed period of 60 days.

7. Learned counsel for petitioner-Amit Sharma @ Makhan has also contended that as mentioned in Annexure R-1, i.e the report of RTFSL Bathinda and also in Para 4 in the Reply (in CRM-M No.29457 of 2021), the sample of the loose intoxicant tablets, as alleged to have been recovered from the above-named petitioner, has been found to be containing 'Tramadol Hydrochloride' salt and the average weight of these tablets is reported to be 406.89 mg and the total weight of said 300 tablets, thus calculated, comes out to be 122.067 gm which falls within the category of 'intermediate/non-commercial quantity' of the said salt and the petitioner is behind the bars since 18.04.2021 and in such circumstances, he deserves the concession of regular bail.

8. Per-contra, learned State counsel has argued that both the petitioners had links with their co-accused named Yogesh Kumar @ Sonu, Gurdeep Singh and Puneet Kumar and the quantity of the contraband recovered from their said co-accused falls within the segment of 'commercial quantity' and it being so, the present petitions be dismissed.

9. Initially, petitioner-Sandeep is stated to have been arrested in pursuance of the disclosure statements as allegedly suffered by his aforementioned three co-accused and his own disclosure statement is alleged to have

led to the arrest of petitioner Amit Sharma @ Makhan, in this case and accordingly, Section 29 of the Act was added in the above-said FIR. Keeping in view the afore-referred fact that in some paragraphs in the Status-reports/Reply filed in these petitions, the labelled tablets, as alleged to have been recovered from petitioner-Sandeep Kumar and his above-said three co-accused, were mentioned as 'CLOVIDOL-100 SR' tablets whereas in certain other paras, the same were described as 'CLAVIDOL-100 SR' tablets, the second sample, as drawn/separated out of the labelled/packed tablets, as allegedly recovered from petitioner-Sandeep Kumar, was sent to the FSL, Madhuban, for its testing/chemical analysis, of course with the consent of his learned counsel, vide the order dated 07.10.2021 passed in CRR No.746 of 2021 and as per the report (in CRR No.746 of 2021) received from the said Laboratory, the same was found to be containing the salt 'Pregabalin'. Concededly, 'Pregabalin' salt does not fall within the ambit of the Act.

10. Further, Anneuxre P-9 (in CRR No.746 of 2021) is the copy of the charge-sheet pertaining to the criminal case arising out of the subject FIR and a perusal of the same reveals that the trial Court has framed the charge against petitioners Sandeep and Amit Sharma @ Makhan under Section 22 of the Act only for their having been found in possession of 600 and 300 loose tablets, containing 'Tramadol Hydrochloride', respectively, while specifically mentioning therein that 1500 tablets containing Pregabalin, as recovered from accused-petitioner Sandeep, do not fall within the purview of the Act and the petitioners have not been charge-

sheeted under Section 29 of the Act meaning thereby that the Investigating Agency, in its own wisdom and also for the reasons best known to it, has not presented the Challan against both the petitioners under the said provision, i.e Section 29 of the Act.

11. Though, the issue as to whether the offence under Section 29 of the Act is attracted against both the petitioners in this case or not, would still be a subject matter for consideration and adjudication before/by the trial Court at the appropriate stage, on appreciation and evaluation of the evidence that may be led on the record during the course of trial but at the moment, the fact remains that while deciding the instant petitions qua the prayer of the petitioners for the grant of relief of bail, this Court is supposed to look into and consider the prevalent facts and circumstances of the case. Accordingly, keeping in view the factum of the petitioners having been charge-sheeted under separate heads for the recovery of the said contraband, i.e loose intoxicant tablets, falling within the category of 'non-commercial/intermediate quantity' and the period of their incarceration in connection with this case, the petitions bearing **CRM-M No.22598 of 2021** and **CRM-M No.29457 of 2021**, as preferred by them (petitioners) for seeking the relief of regular bail are allowed and petitioners Sandeep and Amit Sharma @ Makhan are ordered to be released on regular bail subject to their furnishing the requisite personal and surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate, Barnala. Resultantly, **CRR No.746 of 2021** stands disposed of as having become infructuous.

12. However, before parting with the order, this Court is constrained to express its deep concern and anguish over the manner in which the authorities concerned have dealt with the present case at different relevant stages. As discussed earlier, in some paras in the Status-reports/Reply filed in the present petitions, the concerned police officers have mentioned the tablets, allegedly recovered in this case, as 'CLAVIDOL-100 SR' tablets whereas in certain other paras therein, the same have been described as 'CLOVIDOL-100 SR' tablets, without realising the repercussions and consequent legal implications of doing so, despite the fact that they are supposed to be well-versed with the same and are required to deal with such like matters with utmost sincerity and caution. The said discrepancy reflects nothing else but their callously casual approach towards their official duty which is least expected from them because they are duty bound to check the crime graph in the State specially in the circumstances when the drug menace has become deep rooted and is taking its toll like a slow poison for the young generation upon which every nation pins hopes for a bright and secure future.

13. Further, the subject FIR was registered on 13.04.2021 and petitioner Sandeep was arrested on 15.04.2021 and the RTFSL, Bathinda, submitted its report Annexure P-7 on 27.05.2021 and similarly, petitioner Amit Sharma @ Makhan had been arrested on 18.04.2021 and the said Laboratory submitted its report Annexure R-1 on 03.06.2021. It would have been worth appreciation by this Court, had the reports in all such like cases would have been expedited in the similar manner so that the trial

proceedings could have commenced therein without any inordinate delay.

14. Then, it is unpleasantly surprising to note that the Assistant Commissioner Drugs, Food & Drug Administration, (for short 'FDA') Punjab, issued letter Annexure R-17 dated 16.03.2017 to M/s Yorks Pharma, Amritsar, for cancelling the permission, as granted to it to manufacture the formulations containing 'Tramadol Hydrochloride' salt including 'CLAVIDOL 100-SR' tablets, on account of the alleged contravention of the Drugs and Cosmetics Act, 1940 and Rules 1945 by the said manufacturer, while further directing it to stop the manufacturing of all the drug formulations containing the said salt. However, as per the FSL reports, the 'CLAVIDOL-100 SR' tablets, i.e the tablets with the same brand name, as allegedly recovered in this case, contain 'Pregabalin'.

15. Even if the use of the brand names is taken to be not within the domain of the FDA as deposed by the Joint Commissioner (Drugs)/Drug Controller, Punjab in his short affidavit dated 13.12.2021, even then the fact remains that this Department is supposed to check and supervise the manufacturing of the drugs in the State so as to ensure the strict compliance of the relevant law/Rules. The subsequent use of the same brand name, i.e 'CLAVIDOL-100 SR' by the above-said manufacturer for manufacturing the tablets containing a different salt is likely to lead to grave consequences as the same can result in serious health hazards for the patients as well as the public at large. It is only after this Court took notice of the said fact during the pendency of the instant petitions and required the said Department to explain the matter that the

concerned authorities woke up from their deep slumber and issued the letter dated 29.11.2021 (Annexure R-19) to the afore-named manufacturer qua the cancellation of the permission granted to it for manufacturing the drug formulations containing 'Pregabalin'.

16. The afore-discussed conduct, on the part of the Authorities mentioned above, is highly deplorable and it speaks volumes of their questionable acts and omissions which pose a serious challenge for the State in tackling with the drug menace which seems to be touching new heights with every passing day.

27th January, 2022.

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(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned:

Yes

Whether Reportable:

Yes