

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

CRM-M-23202 of 2022 (O&M)

DECIDED ON: 2nd June, 2022

Jaswinder Singh @ Jass

.....PETITIONER

VERSUS

State of Punjab

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Mr. J.S. Thind, Advocate for petitioner.

Mr. Amit Mehta, Sr. DAG Punjab.

AVNEESH JHINGAN, J (ORAL)

Petitioner is seeking regular bail in case of FIR No.144 dated 8.11.2019, under Section 22 of Narcotic Drugs and Psychotropic Substances Act, 1985, (for short 'the Act') registered at Police Station Jhabal, District Tarn Taran.

As per the case set up, on 8.11.2019 police received a secret information that Jaswinder Singh @ Jass (petitioner) is engaged in selling intoxicant tablets. He is bringing Narcotics from Amritsar on a motor cycle for selling it in village Jhabhal. Finding the information reliable, the information was forwarded to CPSDM, Tarn Taran, who reached the spot. Nakabandi was set up, a person was seen coming on a *Pulsar* motor cycle and he had put a plastic bag between the petrol tank of motor cycle and his thigh. On signal from police, he tried to turn back the motor cycle but was caught. He disclosed his name as Jaswinder Singh. Sukhdev Singh son of Mukhtiar Singh was joined as a public witness. 50,000 tablets containing Tramadol salt were recovered from the petitioner.

Learned counsel for the petitioner submits that the petitioner is in custody since 8th November, 2019, no prosecution witness has been examined. He further argues that the story put forth by the police official is improbable as prior to apprehending the petitioner, a Gazetted Officer was called at the spot. It is contended that father of the petitioner was holding a Wholesale Drug Licence, which was valid from 18th November, 2013 to 17th November, 2018. It is further argued that on an application made by the petitioner, the tower location of the police officials who apprehended petitioner were got preserved. Resultantly, the prosecution witnesses are intentionally not appearing for deposition. Submission is that petitioner was apprehended at 12:30 p.m. from Jhanj Ghar.

Learned State counsel opposes the prayer and submits that heavy recovery weighing 20 kg 350 grams of Tramadol was made from the petitioner. He further submits that the recovery was from the motor cycle driven by the petitioner, hence, Section 50 of the Act is not applicable. The contention is that licence was in the name of M/s Arvinder Medical Store and the competent person to deal with the drug was Kulwant Singh (father of the petitioner) who expired on 29th January, 2016. He refutes the contention that the prosecution witnesses are intentionally not appearing, he submits that there is no reason for prosecution to delay the trial.

Before proceeding further, it would be appropriate to note that in the heading of the petition filed, it is written that first petition under Section 439 Cr.P.C. and in para-6 of the petition, pleadings are "*that no such or similar petition has earlier been filed by the petitioner either in this or in the Hon'ble Supreme Court of India.*"

The Registry has put up a note that this is second petition under Section 439 Cr.P.C. and order dated 3rd September, 2020 passed in CRM-M-16184 of 2020 decided on 3rd September, 2020, dismissing the bail petition of the petitioner is annexed. The order is quoted below:

"The prayer in the present petition is for grant of regular bail to the petitioner in case FIR No.144 dated 8.11.2019 under Section 22 of the NDPS Act, 1985, Police Station Jhabal, District Tarn Taran.

The recovery in the present case is 20 kgs and 350 grams of Tramadol tablets which is not only commercial but extremely heavy. One more case is stated to be registered against the petitioner.

No ground for bail is made out.

Dismissed."

The conduct of the petitioner is evident from the fact that material facts have been withheld from this Court. Be that as it may, the recovery from the petitioner is of more than 20 kg tablets containing Tramadol salt. On receiving a secret passing of the information to a Gazetted Officer, in itself will not be enough to even *prima-facie* conclude that the story of the prosecution is improbable. From the perusal of the drug licence it is apparent that the licence was only for godown purpose and the competent person was father of the petitioner who died in the year

2016. No further comments are made on the contentions as it would influence the trial. The contention raised by learned counsel for the petitioner that prosecution witnesses are not appearing for deposition as their tower location was got preserved, needs no comment. The Court working was restricted due to Pandemic situation, yet the charges were framed on 6th April, 2021. The State counsel has contended that there is no intention of the prosecution to delay the trial, the said contention is expected to be backed with the effort of the prosecution to examine the prosecution witnesses as early as possible.

Section 37 of the Act provides stringent condition for grant of bail in case where recovery is of commercial quantity. The custody in itself will not be the only consideration for grant of regular bail, moreso considering the quantity of recovery.

The petition is dismissed.

It is clarified that the observations made hereinabove shall not be construed as an expression of opinion on the merits of the case.

Since the main case has been decided, the pending application, if any is rendered infructuous.

2nd June, 2022

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**(AVNEESH JHINGAN)
JUDGE**

Whether speaking/reasoned *Yes*
Whether reportable *Yes*