

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

CRM-M-26023-2022

Date of Decision:-01.09.2022

Pawan Kumar.

.....**Petitioners.**

Versus

State of Punjab.

.....**Respondent.**

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Gaurav Sharma, Advocate for the Petitioners.

Mr. Hakam Singh, Assistant Advocate General, Punjab.

JASJIT SINGH BEDI, J. (ORAL)

The Prayer in this petition under section 439 Cr.PC is for the grant of regular bail in case FIR No.142 dated 13.04.2022 under Sections 22, 25, 29 of NDPS Act, 1985 registered at Police Station City Barnala, District Barnala.

2. The brief facts of the case are that on 13.04.2022, SI Kuldeep Singh along with other police officials in connection with patrolling and checking of suspected persons were present at Thikriwal Chowk. It was about 4.00 PM, that he has received a secret information that Ranjit Singh @ Happy and accused Pargaso Kaur are habitual of selling intoxicant tablets and Ranjit Singh has brought the intoxicant tablets from another State and supplies the same to Pargaso Kaur, Pargaso Kaur used to sell the intoxicant tablets to the customers in the area of Sansi Mohalla and in the

area of Bus Stand. Today, Ranjit Singh also brought intoxicant tablets on his motor cycle bearing registration no.PB-13BH-8614 and has supplied intoxicant tablets to Pargaso Kaur. If raid be conducted in the area of Bajakhana road and Grain Market, Barnala then they could be caught red handed alongwith intoxicant tablets. On the basis of this secret information, the present case as got registered against them. Then further investigation in the present case was carried out by ASI Sharif Khan.

During patrolling and nakabandi ASI Sharif Khan along with police party apprehended the above said accused persons and from the possession of Pargaso Kaur, 1010 loose intoxicant tablets, 40 intoxicant tablets of ETEZOLA and from the possession of Ranjit Singh, 1000 intoxicant tablets of Prodol 150 SR and 120 intoxicant tablets of TMD/100 SR were recovered and they were arrested in the present case.

During the interrogation of above said accused persons, Pawan Kumar (petitioner) was nominated as an accused in the present case and an offence under Section 29 of NDPS Act was added. On 15.04.2022 accused Pawan Kumar was arrested in the present case. At the instance of accused Pawan Kumar, 50 intoxicant tablets of TMD/100 SR and 30 intoxicant capsules make Prebasun-300 were also recovered on 17.04.2022.

During the investigation of the present case, the accused Pargaso Kaur disclosed that she had given some tablets purchased by her from Pawan Kumar to accused/Navneet Kaur (since granted bail vide order dated 14.07.2022) for sale and accordingly, she was nominated as an accused in the present case under Section 29 of the NDPS Act and was arrested on 24.04.2022. At the instance of the accused-Navneet Kaur, 100 intoxicant tablets were also recovered on 26.04.2022.

Samples of the above said intoxicant tablets were sent to the FSL. As per report of that FSL, the contents of samples of the said tablets were found to be “**Tramadol Hydrochloride**”.

3. The Counsel of the petitioner contends that the petitioner has been falsely implicated in the present case and various provisions relating to search and seizure provided under the NDPS Act have been violated. He contends that a recovery of 50 loose tablets weighing a total of 20 grams approximately would amount to recovery of non commercial quantity, the commercial quantity of Tramadol being 50 grams. He contends that the question of adding the recovery from each of the arrested accused to make it a case of commercial quantity of recovery is against the settled proposition of law and refers to the judgments in two cases i.e. **Sarban Singh @ Lakhi @ Sarwan Kumar Vs. State of Punjab CRM-M-49251-2021** Decided on **02.12.2021** & **Sukhdev Singh Vs. State of Punjab CRM-M-53872-2021(O&M)** Decided on **27.04.2022** . He contends that rigors of Section 37 of the NDPS Act shall not be applicable to the present case as the recovery is not of commercial quantity. Even otherwise the co-accused of the petitioner, namely, Navneet Kaur has been granted bail by this Court and thus the petitioner deserves the concession of regular bail.

4. The Counsel for the State on the other hand refutes the arguments raised by the counsel for the petitioner. He submits that the petitioner does not deserve the concession of bail as he has been specifically named by the arrested accused. He submits that the recovery from each accused is to be clubbed to examine the total quantity recovered. He however admits the fact that there is no other case against the petitioner and he is in custody since 16.04.2022.

5. I have heard counsel for both the sides at length.
6. This Court in **Sukhdev Singh Vs. State of Punjab CRM-M-53872-2021(O&M)** Decided on **27.04.2022** held as under:-

*“ 3. The Counsel for the petitioner contends that the recovery effected from him was 1Kg 350 grams of Opium which was a non commercial quantity and recovery from his co-accused could not be clubbed to his recovery to make the total recovery that of commercial quantity. He relies on the judgment of this Court in **Amit Dhanak Vs. State of Haryana CRM-M-33684-2020** Decided on **11.01.2021** to contend that when there is separate recovery from each accused of non commercial quantity then the recovery from each accused cannot be clubbed together so as to disentitle all the accused to the grant of bail. Relevant para of the order is reproduced as under:-*

“ Considering the facts; that in the FIR specific recovery has been attributed to all the three accused of 16Kgs of Ganja Patti each; they are in custody since August, 2020; no recovery is to be made; the individual recovery is of non commercial quantity and conclusion of trial would take time, both the petitions are allowed. The petitioners are ordered to be released on bail subject to their furnishing surety/bail bonds to the satisfaction of the learned trial Court/Duty Magistrate concerned. ”

*A similar view has been taken by this Court in the case of **Sukhwinder Singh Vs. State of Punjab CRM-M-13534-2022** Decided on **05.04.2022**. Similarly the Hon'ble Supreme Court in **Amarsingh Ramjibhai Barot Vs. State of Gujarat 2005 AIR (Supreme Court) 4248** held as under:-*

“ A number of contentions were urged in the High Court by the appellant in support of his appeal. It was contended that the conviction was liable to be set aside as there was non-compliance with the provisions of section 42(2), 50, 52 and 57 of the NDPS Act. There is no substance in this contention. The High Court, however, was of the view that the conviction of the appellant under section 17 and 18 read with section 29 of the NDPC Act was not correct. On the other hand, the High Court came to the conclusion that the appellant was liable to be convicted under Section 21(c) and also under Section 21(c) read with Section 29 of the Act, for

individually being in possession of 920 grams and for being jointly, in conspiracy with the deceased, in possession of 4.250 kgs. of the prohibited substance recovered. In the view of the High Court, the total amount of prohibited substance recovered (personally from the appellant and also from the joint possession of the two accused) being more than “commercial quantity” as defined under the applicable notification, the appellant was liable to be visited with the minimum punishment of 10 years rigorous imprisonment plus fine of Rs. 1 lakh. The High Court was also of the view that, even if the quantity of 920 grams recovered from the appellant alone were to be considered, it would warrant conviction under Section 21(c) and the minimum sentence of 10 years rigorous imprisonment plus fine of Rs. 1 lakh. Being aggrieved thereby, the appellant is before this Court.

The learned counsel appearing for the appellant urged only one contention in support of the present appeal. He contended that the High Court fell into an error in taking the total quantity of the offending substances recovered from the two accused jointly and holding that the said quantity was more than the commercial quantity, warranting punishment under Section 21(c) of the NDPS Act. He contended that as far as the appellant is concerned, the High Court erred by assuming that there was criminal conspiracy within the meaning of Section 29 of the NDPS Act, and erroneously proceeded under the said section. The High Court fell into a further error of assuming that because Section 29 was applicable, the total quantity of opium recovered was 920 grams plus 4.250 kgs. The counsel urged that because of this error the High Court took the wrong view that the total recovered opium was of “commercial quantity” and, therefore, attracted Section 21(c) of the NDPS Act.

Although, at first blush, the argument of the learned counsel appeared attractive, on careful appreciation of the facts on record we are satisfied that the High Court judgment is fully justified and needs to be upheld. It is true that the High Court proceeded on the footing that there was a criminal conspiracy between the appellant and the deceased, Danabhai Virabhai Rabari. In our view, however, there was no warrant for this conclusion at all as there is no evidence to suggest that there was any such abetment and/or criminal conspiracy within the meaning of Section 29 of the NDPS Act. The appellant and Danabhai Virabhai Rabari were found together, but individually carrying the recovered substances. Hence, it was not possible for the High Court to take the view that Section 29 was attracted. ”

4. *The Counsel for the State on the other hand contends that the total quantity of the contraband recovered from both the accused is to be considered in order to adjudicate upon the bail application in which case the recovery was of a commercial quantity thereby attracting the bar of Section 37 of the NDPS Act.*

5. *I have heard counsel for both the parties at length.*

6. *A perusal of the orders/judgments reproduced herein above would show that the total quantity recovered from both the accused are not to be seen collectively when individual recovery from each accused is of non commercial quantity.*

In view of the above, since the recovery from the petitioner is of a non commercial quantity of Opium the rigors of Section 37 of the NDPS Act are not applicable to the case of the petitioner.

A similar view has been taken by a Co-ordinate Bench of this Court in **Sarban Singh @ Lakhi @ Sarwan Kumar Vs. State of Punjab CRM-M-49251-2021** Decided on **02.12.2021**. Thus it is apparent that only the recovery from the present petitioner is to be considered to examine as to whether the same is of commercial or non commercial nature at least at the stage of deciding of this bail application. In the present case the recovery is of approximately 20 grams of Tramadol which is less than the commercial quantity of 50 gms, and, therefore, the rigors of Section 37 of the NDPS Act shall not be applicable to the present case.

Even otherwise the co-accused of the petitioner has been granted bail vide order dated 14.7.2022 and he is in custody since 16.04.2022.

7. Thus without commenting on the merits of the case, the present

petition is allowed and the petitioner-**Pawan Kumar** son of Sh. Ram Diyal is ordered to be released on bail subject to their furnishing bail bonds and surety bonds to the satisfaction of learned CJM/Duty Magistrate, concerned. However, it is made clear that the observations made in this order are only for the purposes of deciding this bail application and the Trial Court is free to proceed with the Trial uninfluenced with any observations made herein.

The petitioner shall appear before the police station concerned on the first Monday of every month till the conclusion of the trial and inform in writing each time that he is not involved in any other crime other than the present case.

Petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

September 01, 2022
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>