

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

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**CRM-M-27606-2022
Decided on : 17.10.2022**

Gurwinder Singh alias Giani PK

. . . Petitioner(s)

Versus

State of Punjab

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. J.S. Sandhu, Advocate
for the petitioner(s).

Mr. J.S. Arora, DAG, Punjab
assisted by ASI Renu.

SANJAY VASHISTH, J. (Oral)

The instant petition has been filed under Section 439 of the Code of Criminal Procedure, 1973, for grant of regular bail to the petitioner – Gurwinder Singh alias Giani PK, who has been booked for having committed the offence punishable under Section 21(b), 22(c), 29 of the NDPS Act, 1985, in FIR No. 79, dated 09.07.2021, registered at Police Station Tapa, District Barnala, Punjab, during the pendency of trial.

At the outset, learned State counsel has filed the custody certificate dated 15.10.2022 in Court today. Same is taken on record, subject to all just exceptions. Office to tag the same at appropriate place.

A copy thereof has been handed over to the counsel for the petitioner.

Learned counsel for the petitioner argues that recovery in the present case is of 500 grams of powder of Tramadol Hydrochloride, which is double to the non-commercial quantity. Thus, same cannot be termed as

extra ordinary heavy quantity recovered from the possession of the petitioner. He, therefore, submits that there are arguable points in the matter such as non-compliance of Sections 42, 50, & 52 of the NDPS Act. He also submits that the co-accused of the petitioner, i.e. Mandeep @ Babbu has already been released on bail, from whom recovery of 45 grams of Heroin was effected.

Besides above, in regard to registration of other case FIR No. 55, dated 05.07.2021, as reflected in the custody certificate 15.10.2022, learned counsel for the petitioner submits that petitioner was made an accused in the said case subsequently, after being arrested on 11.07.2021 in the present case FIR No. 79, dated 09.07.2021. Thus, it is argued that in case FIR No. 55, dated 05.07.2021, petitioner cannot be termed as a prime accused. Moreover, till date, in none of the cases, petitioner has been convicted under the NDPS Act.

Learned counsel for the petitioner further submits that the present FIR does not give the details of the vehicle used by the police party.

On the contrary, while opposing the prayer and submissions made by learned counsel for the petitioner, learned State counsel submits that commercial quantity of Tramadol Hydrochloride has been recovered from the petitioner and thus, he does not deserve any sympathy by grant of concession of regular bail by this Court. Besides this, one more case i.e. FIR No. 55, dated 05.07.2021, at Police Station Bhadaur, also stands registered against the petitioner.

On asking of the Court, learned State counsel on instructions from ASI Renu, submits that out of total 23 witnesses, only 01 prosecution witness has been examined so far.

I have heard learned counsel for the parties and perused the

relevant material available on record.

Undoubtedly, recovery from the petitioner is 500 grams of Tramadol Hydrochloride, which is commercial in nature, however, same cannot be stated to be very high quantity, as it is just double to non-commercial quantity. Moreover, petitioner in the present case has already undergone the custody period of more than 01 year and 03 months, with recording of only 01 prosecution witness, out of total 23 witnesses. Thus it appears that trial is not proceeding with natural speed, rather same is proceeding with a slow pace, and for the said reason, petitioner cannot be kept inside jail for an indefinite period.

As far as, registration of other case i.e. FIR No. 55, dated 05.07.2021, under the NDPS Act is concerned, of course there being commercial quantity in the present case, bar under Section 37 of the NDPS Act would be the subject matter. However, as a matter of fact, as stated before this Court, petitioner has never been convicted so far, in any of the cases under the NDPS Act.

In view of the facts and circumstances of the case and submissions recorded, hereinabove, the prayer made in the present petition is **allowed**. Petitioner is ordered to be released on bail in this case, subject to his furnishing bail/surety bonds to the satisfaction of the learned trial Court/ Chief Judicial Magistrate/ Illaqa Magistrate/ Duty Magistrate concerned, if not required in any other case.

It is made clear that the petitioner shall not extend any threat and shall not influence any prosecution witnesses in any manner directly or indirectly.

The observation made hereinabove shall not be construed as an

expression of opinion on the facts of the case and the Trial Court is expected to decide the case on the basis of complete evidence available on record.

It is further made clear that if in future petitioner is found indulged in similar kind of activities, prosecution would be at liberty to seek cancellation of bail in the present case.

Petition stands disposed of.

(SANJAY VASHISTH)
JUDGE

October 17, 2022

J.Ram

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No