

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

**CRM-M-34803-2021**

**Date of Decision:-21.04.2022**

**Gursewak Singh @ Sebi.**

.....Petitioner.

Versus

**State of Punjab.**

.....Respondent.

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

Present:- Mr. Sanjeev Gupta, Advocate for the Petitioner.

Mr. Sandeep Singh Deol, DAG Punjab.

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**JASJIT SINGH BEDI, J. (ORAL)**

The Prayer in this second petition is for the grant of regular bail under Section 439 Cr.PC in case FIR No.0085 dated 04.12.2020 under Sections 22 and 25, 29-61/85 of NDPS Act, 1985 registered at Police Station Tallewal, District Barnala.

The brief facts of the case are that FIR No.85 dated 04.12.2020 Police Station Tallewal, District Barnala was initially registered under Section 22 and 25 of the NDPS Act against Firozdeen @ Fauji who as per the secret information was habitual of selling intoxicating tablets in the area of village Bihla, Tallewal etc and smuggled the same in Car bearing registration no.PB-25D-2488. The said Firozeen @ Fauji was apprehended while he was travelling in the vehicle and three thousand intoxicating tablets were recovered from him.

During the investigation, he disclosed that he used to bring the intoxicating tablets from Naresh Kumar resident of village Dhanner, Vicky resident of Dhanner and Goldy resident of Bassiya and Gursewak Singh son of Jaswant Singh @ Bant Singh. Based on the aforementioned disclosure statement these four persons were nominated as accused. During further investigation, Gursewak Singh son of Jaswant Singh @ Bant Singh resident of Diwana was arrested on 23.04.2021 and in his disclosure statement, he named Gursewak Singh @ Sebi son of Jagtar Singh resident of village Gehal (the present petitioner). The petitioner was arrested by the police on 27.04.2021 and on 30.04.2021 the petitioner got recovered 72 strips of Tramadol Hydrochloride IP 100 tablets(720 tablets) and 100 tablets of Tramadol Hydrochloride making it a total of 820 tablets. Supplementary challan against the petitioner was submitted on 08.10.2021.

The Counsel for the petitioner submits that he has been falsely implicated in the present case. In fact the petitioner was an accused in FIR No.6 dated 20.03.2021 under Section 22-61-85 of NDPS Act, Police Station Tallewal, District Barnala (Annexure P-1). His bail had been declined by the trial Court. He had approached this Court vide anticipatory bail petition bearing CRM-M-15490-2021 in which interim anticipatory bail was granted. The petitioner was to join investigation on 27.04.2021 and on that day when he had gone to join investigation in compliance of the order dated 08.04.2021 passed in aforementioned CRM-M-15490-2021, the police involved/arrested him in the present case. He further contends that taking the allegations to be absolutely true the recovery from the petitioner of 820 tablets of Tramadol Hydrochloride would be equatable to 273.4gms of Tramadol Hydrochloride. The commercial quantity of the same is more

than 250 grams of the said substance and thus the recovery being marginally above the commercial quantity, the petitioner deserves the concession of regular bail.

The Counsel for the State on the other hand has while adverting to the reply of ASP Barnala dated 18.12.2021 stated that the petitioner was rightly nominated in the present case. He is an accused in another case bearing FIR No. 6 dated 20.03.2021 under Section 22-61-85 of NDPS Act, Police Station Tallewal, District Barnala and thus being a habitual criminal does not deserve the concession of regular bail.

I have heard counsel for both the sides at length.

The petitioner was not named in the FIR nor by Firozdeen the person arrested at the spot. He has been named by one of the four accused named by Firozdeen, namely, Gursewak son of Jaswant Singh. It was only when the petitioner went to join investigation in FIR No.6 dated 20.03.2021 under Section 22-61-85 of NDPS Act, Police Station Tallewal, District Barnala, he was arrested in the present case where the recovery of 820 tablets has been shown.

It may be relevant to mention here that during the pendency of the anticipatory bail petition in FIR No. 6 dated 20.03.2021 under Section 22-61-85 of NDPS Act, Police Station Tallewal, District Barnala, at no point in time was it mentioned by State that the petitioner's custody was being sought in FIR No.85 dated 04.12.2020 (i.e. present FIR) as well.

This Court in cases involving recovery of marginally above commercial quantity of the contraband granted the accused person the concession of bail.

**In Manpreet Kaur Vs. State of Punjab 2021(2) Law Herald**

**1196** it was held as under:-

*“3. As per the version of FIR, the petitioner was apprehended by the police party on 04.12.2020. She had thrown one transparent polythene bag containing 780 tablets of Tramadol Hydrochloride on seeing the police party.*

*5. Learned State counsel, on instructions from Sub Inspector Shinder Singh, opposes the bail. The contention raised is that there is a recovery of 266.19 gms.*

*6. Albeit the recovery is commercial but it cannot be lose sight that it is just marginally above the commercial quantity. The petitioner is not involved in any other case of NDPS Act. Though the challan has been presented but conclusion of trial is likely to take time. No useful purpose would be served by keeping the petitioner behind bars, the petition is allowed and the petitioner is released on bail subject to her furnishing bail bonds to the satisfaction of the Chief Judicial Magistrate/Duty Magistrate concerned. ”*

**In Kala Vs. State of Punjab CRM-M-44873-2019 Decided on**

**24.01.2020** it was held as under:-

*“ As per the version of the prosecution, 750 tablet of calvidol containing tramadol hydrochloride and 330 tablets of altis containing alprazolam have been recovered.*

*It has not been disputed that the quantity of alprazolam falls under the ambit of non-commercial quantity. However, the total weight of the tablets containing tramadol is to the extent of 268.5 grams which is marginally above the commercial quantity.*

*Reliance has been placed upon the judgments of this Court in **CRM-M-37253 of 2016 (Festus Ugochukwu Vs. State of Punjab) decided on 07.12.2016** and **CRM-M-40876-2017 (Vishal Shah vs. State of Punjab) decided on 04.04.2018**. In the said decisions quantity to the extent of 270 grams and 300 grams of heroine was construed to be marginally over and above the non-commercial quantity. ”*

**In Hardeh Rani @ Motto Vs. State of Punjab CRM-M-**

**50642-2021** Decided on **07.01.2022** it was held as under:-

*“ Keeping in view the prevailing Covid-19 situation, the trial is not likely to be heard or concluded in near future. The total recovery effected from the petitioner in the present case is 750 tablets of Tramadol Hydrochloride, weighing 270 grams, which is marginally above the commercial quantity i.e. 250 grams. Therefore, without meaning any expression of opinion on the merits of the case, it is ordered that the petitioner be released on regular bail subject to her furnishing requisite bail bonds/surety bonds to the satisfaction of the trial Court, Fazilka.*

*The petition is allowed. ”*

**In Satnam Singh @ Chacha Vs. State of Punjab CRM-M-**

**34531-2020** Decided on **25.02.2021** it was held as under:-

*“ Learned counsel for the petitioner inter alia contends that the recovery of 720 Clovidol 100-SR effected from the petitioner is marginally higher than the minimum prescribed 'commercial quantity'. She further submits that in the wake of alleged recovery being just marginally higher than the commercial quantity, the petitioner be extended the concession of regular bail since the petitioner is not involved in any other criminal case much less under the NDPS Act. The petitioner has been in custody since 16.08.2020 and challan has been presented as on date. Hence, there is no likelihood of the trial concluding in the near future. ”*

A perusal of the aforementioned orders of this Court would show that where the recovery is marginally above the commercial quantity, this Court has been inclined to grant the concession of regular bail because either the polythene bag had some weight or an element of error in the weightment itself was possible.

Thus, keeping in view the fact that the petitioner is in custody since 27.04.2021, the supplementary challan against him already stands presented and the trial is not likely to be concluded in near future, therefore, without commenting on the merits of the case, the present petition is allowed and the petitioner **Gursewak Singh @ Sebi** son of Sh. Jagtar Singh is ordered to be released on bail subject to his furnishing bail bonds and surety bonds to the satisfaction of learned CJM/Duty Magistrate, concerned.

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 that he is not involved in any other crime other than the present case.

If the petitioner indulges in the commission of a similar offence for which he is currently charged, the State would be at liberty to move an application for cancellation of bail.

Petition stands disposed of.

( JASJIT SINGH BEDI )  
JUDGE

April 21, 2022

Vinay

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