

216

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

CRM-M-37320-2021 (O&M)

Date of Decision: 05.04.2022

Sandeep Kumar alias Kali

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. S.K. Passi, Advocate,
for the petitioner.

Mr. R.S. Thind, DAG, Punjab.

JASGURPREET SINGH PURI, J. (ORAL)

The present petition has been filed under Section 439 of the Cr.P.C. for grant of regular bail to the petitioner in case bearing FIR No.102 dated 16.06.2021, under Section 22 of the N.D.P.S. Act, 1985 (Section 29 of the N.D.P.S. Act added later on) and Section 61 of the Punjab Excise Act, 1914, registered at Police Station City Fazilka, District Fazilka.

Learned counsel for the petitioner has submitted that the petitioner is in custody since 16.06.2021 and the investigation of the case has already been completed and after the presentation of challan under Section 173 of the Cr.P.C., the charges have also been framed by the learned trial Court. He further submitted that it is a case where the petitioner was holding a valid drug licence and therefore, he was competent to keep the tablets of *Tramadol* with him. He also submitted that the present case was planted upon the petitioner and in fact no recovery was effected from the

house of the petitioner. He further submitted that the petitioner is not involved in any other case and has got clean antecedents. He also submitted that it is a case where even as per the FIR, the occurrence took place at 20.50 p.m., which was at night time and the provisions of Section 42 of the N.D.P.S. Act are not complied with and the alleged recovery was effected from the house of the petitioner and it was not a public place. He further submitted that compliance of Section 42 of the N.D.P.S. Act is mandatory and the entire prosecution got vitiated due to non-compliance in view of the law laid down by the Hon'ble Supreme Court in “Karnail Singh Vs. State of Haryana”, 2009(5) RCR (Criminal) 515.

On the other hand, Mr. R.S. Thind, learned Deputy Advocate General, Punjab, on instructions from A.S.I. Pritpal Singh, has submitted that it is correct that the petitioner is in custody since 16.06.2021 and he is not involved in any other case. However, he has submitted that the case of the petitioner is hit by bar contained under Section 37 of the N.D.P.S. Act because the quantity involved comes under the commercial quantity.

I have heard the learned counsel for the parties.

The petitioner is in custody since 16.06.2021 and admittedly he is not involved in any other case and he is also holding a valid drug licence. The allegations against the petitioner were that there was a recovery of 13050 tablets of *Tramadol* from his house and he has a valid drug licence only for his shop. However, during the course of arguments, a specific query was raised to the learned State Counsel, as to whether the provisions of Section 42 of the N.D.P.S. Act was complied with or not. After perusing the record, the learned State counsel has submitted that the provisions of

Section 42 of the N.D.P.S. Act have not been complied.

Therefore, this Court is of the view that since the provisions of Section 42 of the N.D.P.S. Act are mandatory in view of the law laid down by the Hon'ble Supreme Court in *Karnail Singh's case (supra)* and this Court is *prima facie* satisfied that there are reasons to believe at least at this stage that the petitioner is not guilty of any offence. The State Counsel has not made any submission that in case the petitioner is released on bail then he may repeat the offence specially in view of the fact that he is not involved in any other case and has got clean antecedents. Therefore, both the conditions contained under Section 37 of the N.D.P.S. Act, for making a departure from the bar contained under Section 37 of the N.D.P.S. Act remain satisfied at least at this stage.

In view of the aforesaid position, this Court is of the view that it is a fit case to grant regular bail to the petitioner, consequently, the present petition is allowed and the petitioner is ordered to be released on bail on furnishing bail bond/surety bond to the satisfaction of the trial Court/Duty Magistrate concerned, if not required in any other case.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is only meant for the purpose of decision of present petition.

05.04.2022

Bhumika

(JASGURPREET SINGH PURI)
JUDGE

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| 1. Whether speaking/reasoned: | Yes |
| 2. Whether reportable: | Yes/No |