

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

214

CRM-M-1029-2022 (O&M)

Date of Decision: 10.05.2022

MOHAN LAL @ KALA

... Petitioner

Versus

STATE OF PUNJAB

... Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: Mr. Arjunveer Sharma, Advocate
for the petitioner.

Mr. Gaurav Garg Dhuriwala, Sr. D.A.G., Punjab.

VINOD S. BHARDWAJ, J. (ORAL)

Instant petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the petitioner in case bearing FIR No.95, dated 25.02.2020 under Sections 22, 25 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the NDPS Act') and Sections 467, 468, 471 and 120-B of the Indian Penal Code, 1860 (added later on), registered at Police Station City Barnala, District Barnala.

As per the case of prosecution, the complaint was instituted by the complainant-S.I. Baljit Singh on the basis of a secret information that one Mohan Lal @ Kala son of Pawan Kumar is involved in the business of intoxicant tablets and is selling the same in District Barnala and that in case *Nakabandi* is laid, he can be nabbed red-handed alongwith the intoxicant tablets. Finding the said information to be trustworthy, the same was reduced into writing and sent to police station through Constable Gurjeet

Singh, Belt No.143 for registration of the case/FIR. The petitioner was thereafter apprehended by the investigating agency and an option of search was made to him, to which he opted to be searched in the presence of a Gazetted Officer. DSP Ramninder Singh was called to the spot and search was conducted, which led to the recovery of 80 strips of Alprasafer and 120 strips of Etolam, each strip containing ten tablets. Hence, a total of 2000 tablets were stated to have been recovered from the conscious possession of the petitioner. The petitioner was accordingly taken into custody on 25.02.2020.

Learned counsel for the petitioner submits that insofar as the recovery of 120 strips of Etolam containing the salt 'Etizolam' is concerned, the same was incorporated as part of the schedule under the NDPS Act, to be a prohibited substance only on 23.03.2021 and that it did not fall within the ambit of the NDPS Act prior thereto. Since the FIR in question was registered on 25.02.2020, hence being in possession of the said tablets does not attract any of the penal consequences under the NDPS Act. He submits that insofar as the recovery of 80 strips (i.e. 800 tablets) of Alprasafer containing the salt 'Alprazolam' is concerned, the same weighs 98.28 grams and that the commercial quantity is above 100 grams. Hence, the petitioner was in possession of a non-commercial quantity. It is further stated that the petitioner is not involved in any other case and does not have criminal antecedents.

Learned counsel for the respondent-State does not dispute the said fact and contends that the final report under Section 173 of the Code of Criminal Procedure, 1973 has already been filed and the charges have also

been framed, however, the prosecution evidence is yet to commence. It is, however, not controverted by the learned State counsel that the petitioner does not have any criminal antecedents and no evidence has been recorded so far.

Taking into consideration the aforementioned circumstances and the stage of trial and also the period of custody already undergone by the petitioner as well as the quantity of the recovered contraband alongwith the stage of trial, I deem it appropriate to allow the instant petition.

Accordingly, the present petition is allowed and the petitioner is admitted on regular bail subject to his furnishing bail bonds/surety bonds to the satisfaction of Trial Court/Duty Magistrate, concerned.

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 on the merits of the case and the Trial Court shall decide the case on the basis of available material.

(VINOD S. BHARDWAJ)
JUDGE

10.05.2022
rajender

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No