

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****SR. No.224****CRM-M-54407-2021****Date of Decision:08.08.2022****Gulshan Singh and another****...Petitioners****Versus****State of Punjab****...Respondents****CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI**

Present: Mr. Hardip Singh, Advocate,
for the petitioners.

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

JASGURPREET SINGH PURI, J. (Oral)

The present petition has been filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No.119 dated 16.08.2021 under Sections 22/61/85 of the NDPS Act, registered at Police Station Khuian Sarwar, District Fazilka.

It has been submitted by the learned counsel for the petitioners that the petitioners are in the custody since 16.08.2021, which is almost 01 year. He further submitted that though the charges have been framed on 29.11.2021 but no witness has been examined till date. He submitted that the petitioners, who were coming by bus from Bikaner (Rajasthan) and were on the way to Bathinda and Ludhiana, were falsely implicated in the present case with the alleged intoxicating tablets containing salt of Tramadol Hydrochloride. He further submitted that the bus had started from Bikaner at 08.30 PM on 15.08.2021 and it was to reach its destination via Fazilka. He submitted that in the FIR, the occurrence has been shown to be of 03.00 PM on 16.08.2022, whereas the bus could have reached its

destination early in the morning and therefore, it was a case of false implication. He also submitted that the petitioner is not involved in any other case.

This Court while considering the submissions made by the learned counsel for the petitioners that earlier the wife of petitioner No.1 had filed a petition before this Court in which directions were issued vide Annexure P-7 to Inspector General of Police, Ferozepur Range, Ferozepur to consider the representation with regard to false implication of petitioners but the same was not considered. Thereafter, this Court vide order dated 30.03.2022 directed the Inspector General of Police, Ferozepur Range, Ferozepur, to comply with the order dated 28.09.2021, which was passed in the earlier petition filed by wife of petitioner No.1. However, the learned State counsel stated that the Deputy Inspector General of Police, Ferozepur Range, Ferozepur is officiating the post of Inspector General of Police and therefore, this Court also observed that in such an eventuality, the Deputy Inspector General of Police may do the needful. Thereafter, an affidavit dated 26.04.2022 has been filed by the Deputy Inspector General of Police, Ferozepur Range, Ferozepur, wherein it has been stated that he himself considered the issue and also personally heard the wife of petitioner No.1. Similarly, statements of the police party who apprehended the accused as well as the Gazetted Officer in whose presence the alleged contraband was recovered, were also recorded and it has been found that it was not a case of false implication and the complaint filed by wife of petitioner No.1 was incorrect.

Learned Deputy Advocate General, Punjab, on instructions from Mr. S.S. Brar, DSP, Sub-Division, Abohar, who is present in Court,

submitted that it is a case where the petitioners had started their journey from Bikaner (Rajasthan) by a bus and when they reached near Gumjal, they alighted from the bus since the checking at that point of time was very tightened and strong in view of the occasion of Independence Day. The petitioners stayed at that place, which is a Kutcha area and hid themselves. He further submitted that during the course of enquiry by the Deputy Inspector General of Police, it was found that there was a CCTV footage which was obtained from Bikaner from where the buses are plying, whereby it was found that both the petitioners were carrying two bags each and they came out from an auto-rickshaw. However, the date and time of video could not be ascertained and thereafter, when the petitioners were caught here at Gumjal, which was within the jurisdiction of Police Station Khuian Sarwar, those 04 bags were the same bags as seen in the CCTV footage. He further submitted that Gumjal area is located at the border of Punjab and Rajasthan and is a Kutcha area where normally such kind of activities take place. He submitted that there was a recovery of 10,000 intoxicating tablets each from both the petitioners totalling 20,000 tablets, which contained salt of Tramadol Hydrochloride. He submitted that it is a case of huge recovery of contraband from the petitioners, which falls within the category of commercial quantity and there is no ground available with the petitioners to seek any departure from the bar contained under Section 37 of the NDPS Act and therefore, the prayer of the petitioners is hit by the bar contained under Section 37 of the NDPS Act.

On a specific query being raised to the learned State counsel as to why after framing of the charges on 29.11.2021, no prosecution witness has been examined till date, he has submitted that although delay was

caused but now two official witnesses have been bound down for 18.08.2022 and there are only 07 cited witnesses in the present case. Learned State counsel, on instructions from DSP, Sub-Division, Abohar, has submitted that all the prosecution witnesses shall be examined within a period of 02 months.

I have heard the learned counsel for the parties.

In view of the aforesaid factual position explained by the learned State counsel and the affidavit filed by the Deputy Inspector General of Police, Ferozepur Range, Ferozepur, this Court does not wish to make any observation with regard to the fact that as to whether the petitioners were falsely implicated or not since it can be seen at the time of trial. However, the alleged recovery of 20,000 intoxicating tablets of Tramadol from the petitioners is a huge quantity, which falls under the category of commercial quantity under the NDPS Act. Therefore, in view of the bar contained under Section 37 of the NDPS Act and the fact that the learned counsel for the petitioners has not been able to make out any ground for departure from the bar contained under Section 37 of the NDPS Act, this Court is not inclined to grant the concession of regular bail to them.

Consequently, the present petition is dismissed.

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.

(JASGURPREET SINGH PURI)
JUDGE

08.08.2022
mks

Whether Speaking/Reasoned: YES / NO

Whether Reportable: YES / NO