

In the High Court of Punjab and Haryana, at Chandigarh

Criminal Misc. No. M-54066 of 2021

Date of Decision: 10.01.2022

Sona Ram alias Sonu

... Petitioner(s)

Versus

State of Haryana

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Naresh Kumar Ganga, Advocate
for the petitioner(s).

Mr. Samarth Sagar, Additional Advocate General,
Haryana, for the respondent.

Anil Kshetarpal, J.

1. This is petitioner's fourth attempt to get regular bail in FIR No. 209 dated 08.09.2019, registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "the 1985 Act"), at Police Station Sadar, Sirsa, District Sirsa.

2. The first petition for grant of regular bail to the petitioner was dismissed on 23.09.2020, with the following order:-

"The petitioner prays for grant of pre-arrest bail pending trial in a criminal case arising from FIR No. 209 dated 08.09.2019, registered under Section 22 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter referred to as "the 1985 Act"), at Police Station Sadar Sirsa, District Sirsa.

with his pillion rider was apprehended with 2800 NRX Tramadol Hydrochloride Diclofenac Sodium Dicyclomine Hydrochloride Chlorpheniramine Meleate Capsules Parvoris SPAS Ridley.

Learned counsel for the petitioner contends that the recovery of the narcotics is from the pillion rider and the petitioner cannot be said to be in a conscious possession thereof. He further contends that the petitioner is in custody for a period of one year & one month approximately.

On the other hand, Mr. Chetan Sharma, Assistant Advocate General, Haryana has brought to the notice of this Court that the report from the Forensic Science Laboratory has been received, according to which the capsules contained prohibited substance i.e. Tramadol Hydrochloride. The total weight thereof comes to 1.752 Kgs. Whereas the commercial quantity starts from 250 grams.

*On other hand, learned counsel for the petitioner relies upon an order dated 08.01.2020 passed by the Co-ordinate Bench of this Court in **Criminal Misc. No. M-51767 of 2019** (“**Prahlad Singh v. State of Haryana**”).*

This Court has carefully gone through the order passed by the Co-ordinate Bench of this Court in the aforesaid case. In that case, the total recovery was 510 capsules of Tramadol Hydrochloride. The Court, in the facts of the said case, granted regular bail to the petitioner therein. It will be noticed here

*that Section 35 of the 1985 Act provides for a statutory presumption of culpable mental state. The attention of the Court in the case of **Prahlad Singh** (supra), was not drawn to Section 35 of the 1985 Act.*

The recovery in the present case is of commercial quantity and hence, Section 37 of the 1985 Act is applicable which lays down that unless the Court is satisfied that there are reasonable grounds for believing that the accused is not guilty of such an offence and that he is not likely to commit any offence while on bail, only then the accused can be released on bail.

Keeping in view the provisions of Section 37 of the 1985 Act as also the facts of the present case, no ground to grant the concession of regular bail to the petitioner is made out and hence, the present petition is dismissed”.

3. Although, the learned counsel representing the petitioner has made a sincere endeavour to secure regular bail for the petitioner on the ground that he has suffered incarceration for a period of more than two years, however, in view of the provisions of Section 37 of the 1985 Act, no ground is made out to grant the concession of regular bail to the petitioner. Hence, the present petition is dismissed.

(Anil Kshetarpal)
Judge

January 10, 2022
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No