

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

205

**CRM-M-53105-2022 (O&M)
Date of Decision: 22.11.2022**

Bunty Singh

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Hitesh Verma Advocate
for the petitioner.

Mr. Amish Sharma, Asstt. A.G., Punjab.

JAGMOHAN BANSAL, J. (Oral)

Through instant petition under Section 439 of Code of Criminal Code, 1973, the petitioner is seeking bail in FIR No.61 dated 25.09.2022 registered at Police Station Rureke Kalan, District Barnala, under Sections 22 and 29 of NDPS Act.

Learned counsel for the petitioner submits that 166 gram Tramadol Hydrochloride which is a specified narcotic substance was recovered from the possession of the petitioner. However, the quantity is non-commercial quantity, thus, rigour of Section 37 of NDPS Act is not applicable. He further submits that just to make the recovery as commercial quantity, the prosecution has clubbed quantity of drugs recovered from a co-accused. He specifically pointed out that recovery from co-accused was effected after two days from the date of recovery from the petitioner. He also submits that no other case is pending against the petitioner and he has been falsely implicated in the present case.

Custody certificate dated 21.11.2022 filed by learned State counsel is taken on record.

Learned State counsel submits that drug was recovered from co-accused on the next day and not after two days as contended by learned counsel for the petitioner. He further submits that quantity recovered from the petitioner needs to be clubbed with the quantity recovered from co-accused. The petitioner is in custody since 25.09.2022 and till date, challan has not been presented.

A Co-ordinate Bench of this Court in CRM-M-29038-2022 vide order dated 14.07.2022 after considering the judgment of this Court in *Sarban Singh @ Lakhi @ Sarwan Kumar Vs. State of Punjab CRM-M-49251- 2021 Decided on 02.12.2021 & Sukhdev Singh Vs. State of Punjab CRMM-53872-2021(O&M) Decided on 27.04.2022* has come to a conclusion that quantity recovered from co-accused cannot be clubbed with the quantity recovered from accused. The rigour of Section 37 of NDPS Act cannot be invoked where quantity recovered from an accused is less than commercial quantity.

In the case in hand, the petitioner was arrested on 25.09.2022 and 166 grams Tramadol Hydrochloride was recovered which is admittedly non-commercial quantity. In view of judicial precedents, the quantity recovered from co-accused cannot be clubbed with the quantity recovered from the petitioner.

In view of the fact that the petitioner is in custody since 25.09.2022; he is not involved in any other case and the quantity recovered is non-commercial quantity; the petition deserves to be allowed and accordingly allowed. The petitioner is directed to be released on bail on his

furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

If the petitioner or his family members/associates make any attempt to threat/intimidate the witnesses in the present case, the State would be at liberty to move an application for cancellation of bail granted by this order.

The petitioner shall also furnish separate bonds under Section 34 of the N.D.P.S. Act and Narcotic Drugs and Psychotropic Substances (Execution of Bond by Convicts or Addicts) Rules, 1985.

(JAGMOHAN BANSAL)
JUDGE

22.11.2022
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Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>