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

CRM-M-205-2023(O&M)
Date of Decision: 11.04.2023

HANS RAJ

....Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Arnav Sood, Advocate
for the petitioner.

Mr. Harjinder S. Sidhu, AAG, Punjab.

HARSH BUNGER, J. (Oral)

The instant petition has been filed under Section 439 Cr.P.C for grant of regular bail to the petitioner in case FIR No.0237 dated 18.09.2022 registered under Sections 22 of Narcotic Drugs and Psychotropic Substances Act, 1985 and Section 52-A of the Prisons Act, 1894 (Section 29 of Narcotic Drugs and Psychotropic Substances Act added later on) at Police Station City Hoshiarpur, District Hoshiarpur.

Upon issuance of notice of motion, learned State counsel appeared and has filed status report by way of affidavit of Palwinder Singh PPS, Deputy Superintendent of Police, Sub-Division City, District Hoshiarpur, which is already on record.

Custody certificate dated 09.04.2023 of the petitioner filed by learned State counsel in the Court today. The same is taken on record, subject to all just exceptions.

The brief facts of the case are that on 18.09.2022, Senior Superintendent of Police Central Jail, Hoshiarpur sent a letter bearing

No.6916-ASW, dated 18.09.2022 to the SHO, P.S. City, Hoshiarpur for taking legal action on throwing a packet inside the jail by Jatin Kumar Batra son of Khairati Lal Batra R/o Quarter No.85, Tripple Story Police Line, Hoshiarpur from outside of the jail between tower No.2 and 3 and the said packet contained 25 grams intoxicated powder, one mobile marka Samsung without SIM, one cable, one headphone, 5 bundle of beedies and 5 tobacco puris.

On this, FIR No.237, dated 18-09-2022, U/s 22 of NDPS Act and Section 52 of Prison Act 1854 was registered at P.S. City, Hoshiarpur against accused Jatinder Kumar Batra. During investigation, the accused Jatin Kumar Batra suffered confessional statement that his cousin Hans Raj and Gurpreet Singh @ Gopi are undergoing sentence in the jail and at their instance, he had thrown aforesaid recovered articles inside the jail. On this, petitioner and accused Gurpreet Singh @ Gopi were nominated in the present case and offence U/s 29 of NDPS Act was added in the present case vide DDR No.30, dated 19.09.2022.

Learned counsel for the petitioner submits that the petitioner is innocent and has been falsely implicated in the present case. It is submitted that petitioner is not named in FIR and neither anything was recovered from the petitioner. It is further submitted that investigation in this case is complete and challan has been presented. Learned counsel states that the petitioner has undergone 06 months and 11 days custody in this case (as on 09.04.2023) and the trial is likely to take long time and no useful purpose would be served by keeping him behind the bars any further. It is contended that the alleged recovery in this case is 25 grams of intoxicating powder, which on chemical examination is stated to be containing 'Alprazolam' which is non-commercial and bar of Section 37 is not attracted. It is

submitted that the petitioner had applied for grant of regular bail before the Judge, Special Court, Hoshiarpur, which has wrongly been dismissed vide order dated 06.12.2022 (Annexure P-4). Learned counsel further submits that the petitioner herein is ready to abide by all the conditions as may be imposed by this Court or by the trial Court, accordingly prayer for grant of regular bail is made.

Learned State counsel opposes the plea of petitioner for grant of regular bail on the ground of seriousness of the offence. He submitted that petitioner is involved in many cases under the Prisons Act and he does not deserve the concession of bail. However, learned State counsel does not dispute the fact that investigation in this case is complete and the challan stands presented. It is also not disputed that the present petitioner has undergone 06 months and 11 days of incarceration and the recovered contraband is non-commercial quantity.

I have heard learned counsel for the parties and perused the paper book, status report as well as the custody certificate of the petitioner handed over by learned State counsel, in Court today.

In this case, present petitioner has been nominated as an accused on the basis of an alleged disclosure statement of main accused (Jatin Kumar Batra) who was apprehended with 25 grams of intoxicating powder containing Alprazolam. Alleged recovery from main accused is non-commercial and rigors of Section 37 of Narcotic Drugs and Psychotropic Substances Act are not attracted. Petitioner has undergone 06 months and 11 days of incarceration. Investigation is complete and challan stands presented in this case. The trial is likely to take long time and no useful purpose would be served by keeping the petitioner behind bars for indefinite period.

Keeping in view the aforementioned circumstances, the instant petition is allowed and the petitioner is ordered to be released on regular bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate concerned. However, the concerned Station House Officer shall be informed about the release of petitioner and the petitioner shall inform the concerned Station House Officer about his address at which he intends to reside during the pendency of case and any change in the address shall also be communicated to the concerned Station House Officer, forthwith. The petitioner would also furnish his telephone number to the concerned Station House Officer. He shall appear before the police station concerned on the first Monday of every month till the conclusion of the trial.

In addition, the petitioner (or any one on his behalf) shall prepare a FDR in the sum of Rs.50,000/- and deposit the same with the trial Court. The same would be liable to be forfeited as per law in case of the absence of the petitioner from trial without sufficient cause.

Nothing expressed here-in-above shall be construed to be an observation on merits of the case and the facts and circumstances recorded above are only for consideration of the prayer for bail at this stage.

The petition is accordingly disposed of.

11.04.2023

Amandeep

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No