

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

CRM-M-834-2023 (O&M)
Date of Decision: 24.07.2023

RAJESH KUMAR

...Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Sandeep Kumar Passi, Advocate
for the petitioners.

Mr. Harjinder S. Sidhu, A.A.G., Punjab.

HARSH BUNGER, J.

Petitioner (Rajesh Kumar) has filed this petition under Section 439 of the Code of Criminal Procedure seeking grant of regular bail in case FIR No.220 dated 09.09.2019 (Annexure P-1), under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act'), registered at Police Station City Faridkot, District Faridkot.

2. Status report by way of an affidavit of Sh. Jasmeet Singh, PPS, Deputy Superintendent of Police, Sub Division Faridkot, District Faridkot, on behalf of respondent-State of Punjab, has been filed, which is already on record.

3. Custody certificate dated 08.05.2023 of the petitioner has been filed by learned State counsel in the Court, which is taken on record, subject to all just exceptions.

4. Briefly, the afore-said case FIR was registered on the basis of *ruqa* sent by Sub Inspector Kulbir Chand; wherein, it was stated that on 09.09.2019, he was present at Anti Narcotic Cell, Faridkot, when he received a

telephonic call from Constable Vikram Sharma, informing that near the drain falling on the link road going from Sadiq Road to Aariyan Wala Kalan, there are transparent polythene bags and *gattas*; wherein it is suspected to be containing intoxicant tablets. Accordingly, he was asked to reach at the spot; whereupon, Sub Inspector Kulbir Chand along with police party reached at the spot on government vehicle and having suspicion that there were intoxicant tablets in heavy quantity; accordingly, Deputy Superintendent of Police, Avtar Chand, was requested to reach at the spot. When the Deputy Superintendent of Police, Avtar Chand alongwith his staff reached at the spot on his government vehicle, then after following the procedure and upon directions of the Deputy Superintendent of Police, the polythene bags and *gattas* were pulled out from the drain and the same were checked. On checking all the transparent polythene bags and *gattas*, the following intoxicant tablets/capsules, were recovered :-

<i>Sr. No.</i>	<i>Quantity recovered</i>
<i>1st transparent polythene bag</i>	<i>80 strips of Fortadol Curewell intoxicant tablets, having Batch No.TE-14146, each strip containing 10-10 tablets, total 800 intoxicating tablets.</i>
<i>2nd transparent polythene bag</i>	<i>89 strips of intoxicant capsules mark Proxymol, each strip containing 8-8 intoxicant capsule, total 712 intoxicant capsules.</i>
<i>3rd transparent polythene bag</i>	<i>310 strips of intoxicant tablets of Clovidol-100SR, each strip containing 10-10 tablets, total 3100 intoxicant tablets.</i>
<i>4th transparent polythene bag</i>	<i>1050 strips of intoxicant tablets, mark Rolinos (each strip containing 10-10 tablets, total 10500 intoxicant tablets).</i>
<i>5th transparent polythene bag</i>	<i>160 strips of Pindol Forte (each strip containing 10-10 intoxicant tablets, total 1600 tablets).</i>
<i>6th transparent polythene bag</i>	<i>1100 strips of intoxicant tablets mark Etizol (each strip having 10-10 intoxicant tablets, total 11000 intoxicant tablets).</i>

<i>7th transparent polythene bag</i>	<i>380 strips of intoxicant tablets mark Foridol-DM (each 10-10 intoxicant tablets, total 3800 intoxicant tablets).</i>
<i>8th transparent polythene bag</i>	<i>Intoxicant tablets mark Fortadol-DM were recovered (each strip having 10-10 intoxicant tablets, total 7000 intoxicant tablets).</i>
<i>9th transparent polythene bag</i>	<i>85 strips of intoxicant injections mark Tramatas (each strip having 5-5 injections, total 425 intoxicant tablets).</i>
<i>10th gatta plastic</i>	<i>4360 injections mark Oxytocin Injection-IP were recovered.</i>
<i>11th gatta plastic</i>	<i>5000 injections mark Oxytocin Injection-IP were recovered.</i>

5. The above-said recovered articles were taken into police possession as per the procedure and the FIR in question was registered.

6. As per the status report, during investigation of this case, the case property was produced before the learned Chief Judicial Magistrate, Faridkot on 24.10.2019 and the sealed parcels were opened with due permission to ascertain the address of the respective manufacturers of the different seized intoxicant drugs to trace the accused. Accordingly, the manufacturers were approached and information about the material of respective batch supplied to the distributors, was obtained and the following information was received from the concerned manufacturers :-

*“i) 3100 tablets of Clovidol 100 SR Batch no.TVD 19035 manufactured by Neutec Healthcare Pvt. Ltd., New Delhi.
ii) 10500 tablets of Roline-0.5, Batch no.2411 made by U.V. Pharmaceuticals, Batala road, Amritsar.
iii) 425 Injections of TRAMATAS Batch no.ITR-4968, manufactured by EG Pharmaceuticals, Vill. Mamdhala were supplied to M/s Friends Medical Agency, Faridkot whereas no useful information received from other manufacturers.”*

7. As per the status report, the present petitioner (Rajesh Kumar) being proprietor of the firm M/s Friends Medical Agency was nominated as an accused vide DDR No.17 dated 25.06.2020. It is mentioned in the status report that the petitioner alongwith the case property was produced before the learned Magistrate and the samples from each parcel were drawn after certification of inventory. The sample parcels were deposited with the RTFSL, Bathinda, for chemical analysis and its report was received on 19.10.2020; wherein, the following ingredients were detected in the parcels :-

<i>Parcel</i>	<i>Tramadol Hydrochloride</i>	<i>Paracetamol</i>	<i>Etizolam</i>	<i>Domperidone</i>
A-II	48.97 mg/tab	496.35 mg		
C-II	99.21 mg/tab			
D-II			0.49 mg	
E-II	98.64 mg/tab			19.33 mg
F-II			0.48 mg	
G-II	98.53 mg/tab			19.19 mg
H-II	98.67 mg/tab			19.37 mg
I-II	49.93 mg/ml			

<i>Parcel</i>	<i>Dextropropoxyphene Hydrochloride</i>	<i>Acetaminophen</i>
B-II	64.92 mg/cap	397.53 mg
B-III	64.79 mg/cap	398.10 mg
B-IV	64.83 mg/cap	397.46 mg
B-V	64.71 mg/cap	397.34 mg
B-VI	64.66 mg/cap	398.06 mg

8. The petitioner applied for regular bail, which was dismissed by the learned Judge, Special Court, Faridkot vide order dated 21.12.2022. Accordingly, the present petition has been filed before this Court.

9. Learned counsel for the petitioner submits that the petitioner is innocent and has falsely been implicated in the present case. It is submitted that the recovery of medicines was shown to be made from drain and the name of the petitioner has been added by the police personnel with *mala fide* intent and an ulterior motive. It is submitted that the petitioner is running a medical store under the name and style of 'M/s Friends Medical Agency' at Faridkot and was having a valid licence for the firm (which was valid up to 30.05.2023) at the time of the alleged recovery and the registration of the present FIR. It is next submitted that the petitioner was earlier arrested in case FIR No.209 dated 27.08.2019 under Sections 22/27-A of the NDPS Act, registered at Police Station City Faridkot and was in jail, from where, the police had taken the police remand of the petitioner on 02.07.2020 and on 06.07.2020, the present petitioner is stated to have confessed about the enmity with his worker namely, Dharmpal @ Dharmu and also confessed that he has thrown the intoxicant medicines in the drain. It is further submitted that the admissibility and veracity of such confessional statement would be a debatable issue; however, it is stated that in the FSL report dated 19.10.2020, there is no mention of the Batch Number and other relevant particulars. It is next stated that the petitioner has been granted regular bail in the other case FIR No.209 dated 27.08.2019 by this Court vide order dated 07.12.2022 passed in **CRM-M-28802-2021**. Accordingly, it is submitted that the story of the prosecution is highly improbable and un-natural. It is contended that the mandatory provisions of the NDPS Act, have not been complied with. Learned counsel for the petitioner submits that the petitioner is ready to abide by any condition as may be imposed by this Court or by the trial Court, accordingly prayer for regular bail is made.

10. Per contra, learned State counsel has opposed the prayer of

petitioner for grant of regular bail, by submitting that the recovery of drugs in this case, containing *salt Tramadol Hydrochloride*, falls under the category of “Commercial Quantity” and thus, the bar under Section 37 of the NDPS Act is attracted. It is submitted that the petitioner is a habitual offender and is involved in seven other cases, out of which, six cases are under the NDPS Act. It is further submitted that in case, the petitioner is extended the benefit of regular bail then there is likelihood that he may influence prosecution witnesses or may even abscond and thus delay the trial. Accordingly, it is urged that the petitioner does not deserve the concession of regular bail and thus the instant petition may be dismissed.

11. I have heard learned counsel for the parties and perused the paper book; reply filed on behalf of respondent-State of Punjab as well as the custody certificate of the petitioner.

12. As per the status report, the recovered drugs fall under the category of “Commercial Quantity” and thus the rigors of Section 37 of NDPS Act are attracted. Section 37 of the NDPS Act, 1985, is reproduced hereunder:-

“[37. Offences to be cognizable and non-bailable.—

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), —

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are

reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.].”

Hon’ble the Apex Court in ***Union of India vs Rattan Mallik @ Habul2009(1) RCR (Criminal) 938***, has held that when an accused is arrested in a case under the NDPS Act, 1985 then grant of bail to that accused is not only subject to limitation imposed under Section 439 of the Code of Criminal Procedure, but it is also subject to the restrictions placed by Section 37 of the NDPS Act, 1985 and the accused can be granted bail only if the Court is satisfied that there is a reasonable ground for believing that accused was not guilty of offence and also that he was not likely to commit any offence under the NDPS Act, 1985 while on bail.

In the instant case, at this stage, no *prima facie* satisfaction can be recorded that the petitioner is not guilty of offence or that he is not likely to commit any offence under the NDPS Act while on bail; moreso when the petitioner does not have clear antecedents as he is involved in seven other cases, which are as under :-

<i>Sr. No.</i>	<i>FIR No.</i>	<i>Under Section</i>	<i>Status</i>
1.	170 dated 25.07.2016	22/25/29/61/85 NDPS Act, P.S. City Faridkot	Convicted vide order dated 08.02.2023.
2	132 dated 13.06.2016	294-A IPC and 13A Gambling Act, P.S. Salem Tabri, Ludhiana.	Convicted vide order dated 16.11.2017.
3	16 dated 21.03.2017	22/29/61/85 NDPS Act, P.S. Sadiq	Convicted vide order dated 22.10.2019
4	97 dated 02.07.2019	22/29 NDPS Act, P.S. Jaitu	Under Trial

5	111 dated 09.05.2019	22/29 of NDPS Act, PS City Faridkot	Convicted vide order dated 25.11.2022
6	167 dated 18.07.2019	22/29 NDPS Act, PS City Faridkot	Under Trial
7	209 dated 27.08.2019	22/61/85 of NDPS Act, PS City Faridkot	Under Trial

13. Concededly, the trial in this case is undergoing. The guilt of the accused shall be determined during the trial. The apprehension expressed by the State counsel that if released on bail, there is every likelihood of the petitioner trying to tamper with the prosecution evidence by giving threats and inducement to the prosecution witnesses and absconding even to prolong the trial, cannot be brushed aside lightly.

14. Keeping in view the gravity and seriousness of offence; antecedents of the petitioner and also the likelihood of petitioner tampering with the prosecution evidence and even absconding, the present petition under Section 439 Cr.P.C. seeking grant of regular bail to petitioner (Rajesh Kumar) in case FIR No.220 dated 09.09.2019 (Annexure P-1), under Section 22 of the NDPS Act, registered at Police Station City Faridkot, District Faridkot; is dismissed.

A perusal of order dated 21.12.2022 passed by learned Judge, Special Court, Faridkot reveals that in the instant case FIR, the petitioner was arrested on 02.07.2020; charge was framed against the petitioner on 04.02.2021 and prosecution evidence was going on; accordingly, considering the fact that the petitioner has been in custody since 02.07.2020, the trial Court is directed to expedite the trial.

15. Nothing stated here-in-above shall be construed as an expression

of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

16. Pending application/s, if any, shall also stand disposed of.

July 24th, 2023
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No