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2023:PHHC:116014

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

CRM-M-1829-2023 (O&M)

Date of decision : 04.09.2023

DURGESH MISHRA

....Petitioner

Versus

STATE OF PUNJAB

....Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Keshavam Chaudhri, Advocate and
Mr. Digvijay Singh, Advocate for the petitioner.

Mr. Amit Shukla, AAG, Punjab.

PANKAJ JAIN, J. (ORAL)

CRM-36877-2023

This is an application for placing on record vernacular copy of Special Report dated 16th of May, 2021 (P-7) pertaining to the petitioner marked as Annexure A-1.

For the reasons recorded in the application, the same is allowed. Document marked as Annexure A-1 is taken on record subject to all just exceptions.

CRM-M-1829-2023 (O&M)

This petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case F.I.R. No.92 dated 14th of May, 2021 registered for the offences punishable under Sections 22 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act') and

Section 188 IPC at Police Station Phase-I, SAS Nagar.

2. Custody Certificate of the petitioner has been filed today in Court. The same is taken on record.

3. As per case of the prosecution, it has been alleged as under :

“That with regard to the subject matter of the present petition, it is respectfully submitted that case/FIR No. 92 dated 14/05/2021 u/s 22 NDPS Act, 188 IPC was registered at PS Phase 1, District SAS Nagar against Arun Kumar Sharma on the rug of SI Harjinder Singh that on 14/05/2021, he along with police party was present near new bus stand, Phase 6, Mohali for patrolling and search of suspicious persons when time at around 5:30 PM, one haircut person was seen coming on a black coloured scooter from Kamla Market, Phase 1, Mohali, who was signaled to stop as he was having one black coloured heavy polybag kept between his feet on scooter, who on seeing the police party, took a sharp cut and tried to turn back but he along with scooter No. CH-04-B-0134 make Honda Activa colour black and one black coloured heavy polybag fell on the ground and the polybag along with medicine boxes scattered on the ground, in which, the strips of medicines were easily visible. Upon this, SI Harjinder Singh along with police party apprehended the said person, enquired about his health and asked about his name, who stated his name as Arun Kumar Sharma alias Arun Sharma. He was asked about the medicines scattered on the ground but he could not give any satisfactory response and could not produce any bill, permit or license for being in possession of the said medicines. Thereafter, the medicines scattered on the ground were collected and checked wherein, 30 boxes of Tramadol Hydrochloride tablets (14,400 tablets) and 5 boxes of Alprazolam tablets (3150 tablets) were recovered, which were taken into police possession, in accordance with law.

3. That pursuant to the registration of case/FIR No. 92 (supra), the investigation commenced. During the course of investigation, the spot was inspected, site plan was prepared and

the statements of witnesses were recorded under section 161 Cr.P.C. The recovered contraband along with black coloured polythene bag was taken into police possession, in accordance with law. The scooter No. CH-04-B-0134 make Honda Activa colour black was taken into police possession, in accordance with law. The accused Arun Kumar Sharma alias Arun Sharma was arrested at the spot, in accordance with law. The recovered contraband was sent for examination to FSL, Phase 4, Mohali, the report of which revealed the presence of 99.8 mg/tablet tramadol hydrochloride in the contents of parcel A1 and 0.47 mg/tablet alprazolam in the contents of parcel B1. The pwnership of scooter No. CH-04-B-0134 make Honda Activa colour black was got proved from the RLA, Chandigarh.

4. That the accused Arun Kumar Sharma along with the recovered contraband was produced before the Ld. Court on 15/05/2021 wherein, the samples were drawn by the Ld. Court, parcels were sealed and the police remand of the accused Arvind Kumar Sharma was obtained for 2 days. During his interrogation at the time of police remand on 16/05/2021, the accused Arvind Kumar Sharma disclosed that he used to bring the intoxicating tablets from the shop of Durgesh Mishra (petitioner) namely Sakshi Enterprises, 2nd floor, Bankside market, Sector 29, Chandigarh and sell the same to Vijay, Amit and persons of Kaimbwala and he has supplied intoxicating tablets to Vijay and Amit on previous occasions also after bringing the same from the shop of Durgesh Mishra (petitioner). Based upon the aforesaid disclosure statement of the accused Arun Kumar Sharma, the petitioner Durgesh Mishra was nominated as accused in the present case/FIR vide case diary No. 3 dated 16/05/2021.

5. That the accused Arun Kumar Sharma was produced before the Ld. Court on 17/05/2021 wherein, his judicial remand was obtained till 31/05/2021. Thereafter, on 06/06/2021, the search warrants of the shop of the petitioner were obtained from the Ld. Court of CJM, Mohali and the search of the shop of the petitioner was got conducted from the team headed by the Drug Inspector,

Sector 16, Chandigarh on 09/06/2021, however, no intoxicating tablets was recovered from the shop of the petitioner.”

4. Counsel for the petitioner submits that as on date there is no evidence against the petitioner who has been nominated merely on the basis of disclosure made by Arun Kumar Sharma. Admittedly, during the course of investigation the shop of the petitioner was searched and no intoxicating tablet was recovered. He further submits that investigation already stands concluded. Earlier also the petitioner was implicated in one of such cases i.e. FIR No.47 dated 20th of March, 2020 registered for offences punishable under Sections 22 & 29 of the NDPS Act, at Police Station Industrial Area, Chandigarh in which Closure Report was filed by the prosecution on 19th of May, 2022 which stands accepted by the Judge, Special Court, Chandigarh vide order dated 30th of July, 2022. Thus, the petitioner as on date has clean antecedents and he is not involved in any other case. Petitioner is behind bars since 16th of August, 2022 and has by now undergone incarceration of more than 1 year and 14 days. Reliance is being placed upon the law laid down by Apex Court in **Tofan Singh vs. State of Tamil Nadu, (2021) 4 SCC 1**.

5. State Counsel is not in position to dispute the aforesaid factual assertions made by counsel for the petitioner and admits that the investigation already stands concluded, Challan stands presented and most of the witnesses are official witnesses.

6. Without commenting on the merits of the case, keeping in view the incarceration already suffered by the petitioner and the dictum of law laid down in **Tofan Singh's** case (supra), the present petition is allowed. The petitioner is ordered to be released on bail on his furnishing bail bonds/surety bonds to the satisfaction of the Trial Court/Duty Magistrate concerned.

7. However, in addition to conditions that may be imposed by the Trial Court/Duty Magistrate concerned, the petitioner shall remain bound by the following conditions :-

- (i) The petitioner shall not mis-use the liberty granted.
- (ii) The petitioner shall not tamper with any evidence oral or documentary during the trial.
- (iii) The petitioner shall not absent himself on any date before the trial.
- (iv) The petitioner shall not commit any offence similar to the one alleged in the present case.
- (v) The petitioner shall deposit his passport, if any with the trial Court.
- (vi) The petitioner shall give his cellphone number to the police authorities and shall not change his cellphone number without permission of the trial Court.
- (vii) The petitioner shall not in any manner try to delay the trial.

8. In case of breach of any of the aforesaid conditions and those

which may be imposed by the Trial Court, the prosecution shall be at liberty to move cancellation of bail of the petitioner.

9. Pending application, if any, shall also stand disposed off.

September 04, 2023	(Pankaj Jain)
Dpr	Judge
Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No