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

**CRM-M-14669-2023
Date of Decision: 27.04.2023**

Atma Singh

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Achin Gupta, Advocate
for the petitioner.

Mr. Harjinder S. Sidhu, AAG, Punjab.

HARSH BUNGER J. (ORAL)

Prayer in the present petition, filed under Section 439 of the Code of Criminal Procedure, is for grant of regular bail to the petitioner in case FIR No.51 dated 06.05.2022, under Sections 22 (a) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (Charge under Sections 22(c) and 22(b) of Narcotic Drugs and Psychotropic Substances Act, 1985), at Police Station Sadar Kotkapura, District Faridkot.

2. Upon issuance of notice, status report by way of affidavit dated 18.04.2023 of Shamsher Singh, P.P.S., Deputy Superintendent of Police, Sub-Division Kotkapura, District Faridkot has been filed on behalf of State of Punjab, which is already on record.

3. Custody certificate dated 18.04.2023 of the petitioner filed by learned State counsel in Court today is taken on record, subject to all just exceptions.

4. Briefly, on 06.05.2022, when the Police team of Police Station Sadar Kotkapura, headed by Assistant Sub Inspector Hakam Singh, were on patrolling duty and reached at minor canal bridge, village Sibian, then two persons standing under a tree on the side of left path of minor canal were spotted, who upon catching the sight of police were about to whisk away, however, they were apprehended by the Police. On being inquired, one of them disclosed his name as Charanjit Singh @ Niku son of Mishar Singh resident of Village Sibian and the second person revealed his name as Atma Singh (petitioner). Thereafter, Assistant Sub Inspector Hakam Singh introduced himself to the aforesaid persons and apprized them the circumstances required their search to be conducted and offer was given to both the suspects that they can get the search conducted in presence of any Gazetted Officer or Magistrate by calling them at the spot or to take them before any such authority for conducting their search in compliance of provisions of Narcotic Drugs and Psychotropic Substances Act, however, both the suspects reposed faith in Assistant Sub Inspector Hakam Singh to conduct their search and their separate consent memos were prepared. Consequent thereto, the polythene bag carried by aforesaid Charanjit Singh @ Niku was checked in a prescribed manner which led to the recovery of 15 strips of *Etizolam Mouth Dissolving tablets ETM: 0.5 B.No.2101011* each containing 10/10 tablets (total 150) intoxicating tablets. Upon checking the polythene bag carried Atma Singh (petitioner) the recovery of 10 strips of intoxicating tablets *Nrx Tramadol Hydrochloride Tablets 100 mg Clovedol-*

100 SR tablets not bearing any batch number, each strip containing 10/10 tablets was effected. Since, both the accused were not holding any valid licence or permit to retain huge quantity of contraband material in their possession, therefore ruqa was prepared and FIR No.51 dated 06.05.2022 was registered against the petitioner and co-accused (Charanjit Singh) at Police Station Sadar Kotkapura, District Faridkot and both of them were arrested in accordance with law.

5. Learned counsel for the petitioner submitted that the petitioner has been falsely implicated in the present case. Learned counsel submits that the petitioner was earlier granted the concession of regular bail vide order dated 27.06.2022 passed by learned Judge, Special Court, Faridkot (Annexure P-2) by observing the facts that alleged recovery of contraband effected from the petitioner falls under the non-commercial quantity and presentation of challan in the case was likely to take considerable time. However, after presentation of challan, learned trial Court found that as per the amended Central Government notification, the alleged recovery of contraband effected from the petitioner and co-accused fell under the ambit of commercial quantity. Accordingly, the bail granted to the petitioner and his co-accused was cancelled and they were again taken into custody.

6. Learned counsel for the petitioner contends that the total alleged recovery was not a joint recovery, as the same was effected from separate transparent polythene bags carried by petitioner and his co-accused. He further contends that the alleged recovery of 100 tablets containing *Tramadol Hydrochloride* weighing 32.891 grams was effected from the petitioner, which falls under the ambit of non-commercial. It is submitted that investigation in this case is complete, challan has been presented on

30.09.2022 and even charges have been framed on 10.10.2022. It is stated that there are total 13 prosecution witnesses in the present case, however, none has been examined till date, hence, the trial is likely to take long time and no useful purpose would be served by keeping the petitioner behind the bars any further.

7. Learned counsel submits that the petitioner had applied for grant of regular bail before the Judge, Special Court, Faridkot which was wrongly been dismissed vide order dated 30.12.2022 (Annexure P-3). 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.

8. Learned State counsel opposes the plea of petitioner for grant of regular bail on the ground of seriousness of the offences. While, relying upon the status report dated 18.04.2023, learned State counsel submits that petitioner is also involved in another case bearing FIR No.4 dated 21.01.2020, registered under Sections 22 and 29 of Narcotic Drugs and Psychotropic Substances, Act at Police Station Bajakhana, however, it is fairly stated that he is on bail in the said case. It is not disputed that investigation in this case is complete, challan has been presented and even charges have been framed. By referring to Annexure R-1 and para 4 of the status report, learned State counsel has stated that the recovery effected from petitioner is separate from the recovery effected from co-accused (Charanjit Singh @ Niku).

Para 4 of status report reads as under:-

“That in pursuance of the search of accused Charanjit Singh, the polythene carried by said Charanjit Singh alias

Niku was checked in a prescribed manner which led to the recovery of 15 strips of Etizolam mouth Dissolving Tablets ETM:0.5 B.No. 2101011 each containing 10/10 tablets, total 150 intoxicating tablets. Which were converted into a parcel and taken into possession vide a seizure memo. Thereafter the petitioner who was also carrying a polythene was checked and recovered 10 strips of intoxicating tablets NRx Tramadol Hydrochloride Tablets 100 mg Clovedol-100 SR Tablets not bearing any batch number, each strip was containing 10/10 tablets. A separate parcel of these tablets were prepared and taken into possession vide seizure memo. Both the accused were not holding any valid licence or permit to retain huge quantity of contraband material in their possession, therefore ruqa was scribed and FIR No.51 dated 06.05.2022 u/s 22-A/61/85 NDPS Act was registered at P.S Sadar Kotkapura. Accused were arrested in accordance with law.”

Relevant extract of Annexure R-1 reads thus:-

*6. **Article Received** : Two parcels marked as 1 and 2 in the laboratory. Parcel 1 was alleged to be seized from S/V Charanjit Singh alias Ninku. Parcel 2 was alleged to be seized from S/V Atma Singh. Each parcel was sealed with one seal of 'DKH' alleged to contain intoxicating tablets. Seal on parcels was found intact and tallied with the specimen seal impression.*

On opening the parcel was found to contain the following:

Parcel1: One hundred and fifty (150) peach coloured tablets in fifteen (15) strips, each strip labeled an ETM 0.5 Etizolam mouth dissolving tablets bearing Batch No. 2101011 Mfg 01/2021, Exp. 12/2022

Average weight: 153.84 mg/tablet

Parcel 2: One hundred (100) white coloured tablets in ten (10) strips each strip labeled as "CLOVEDOL-100 SR Tramadol Hydrochloride Tablets 100 mg. Average weight 328.91 mg/tablet

7. Purpose of reference: *Analysis and report*

8. Identification & Tests:

Parcels 1 and 2:

Ingredient present	Average quantity of ingredient present in the parcel	
	Parcel 1	Parcel 2
Etizolam	0.48 mg/tablet	
Tramadol Hydrocholride		99.02 mg/tablet

9. I have heard learned counsel for the parties and perused the paper book, status report as well as the custody certificate dated 18.04.2023 of the petitioner handed over by learned State counsel, in Court today.

10. In this case, petitioner is an old aged person of around 71 years, who is behind the bars for the last more than 08 months. Investigation in this case is complete, challan has been presented on 30.09.2022 and even charges have been framed on 10.10.2022. There are total 13 prosecution witnesses in the present case, however, none has been examined till date. Hence, the trial is likely to take long time and no useful purpose would be served by keeping the petitioner behind the bars any further. Even otherwise, since recovery in this case was made separately and the alleged contraband recovered from the petitioner i.e. 100 tablets containing Tramadol Hydrochloride weighing 32.891 grams; falls in the category of non-commercial quantity, hence rigors of Section 37 of Narcotic Drugs and Psychotropic Substances Act, are not attracted.

11. 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/Illaqa 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.

12. In addition, the petitioner (or any one on his behalf) shall prepare an FDR in the sum of Rs.30,000/- 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.

13. Nothing expressed hereinabove 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.

14. The petition is accordingly disposed of.

27.04.2023
Amandeep

(HARSH BUNGER)
JUDGE

1. Whether speaking/reasoned	:	Yes/No
2. Whether reportable	:	Yes/No