

CRM-M-18639-2022 (O&M) -1-

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(214) CRM-M-18639-2022 (O&M)
Date of decision:- 28.08.2023

Kulwinder Singh @ Mor ... Petitioner
Versus
State of Haryana ... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Gurdarshan S. Sidhu, Advocate for the petitioner.
Mr. Munish Sharma, DAG, Haryana for State-respondent.

SUVIR SEHGAL, J. (ORAL)
CRM-22417-2022 and CRM-26472-2023

- 1. Counsel for the applicant-petitioner seeks and is granted permission to withdraw the applications.
- 2. Applications are dismissed as withdrawn.

Main case

- 1. This is the second petition filed under Section 439 Cr.P.C. seeking grant of post-arrest bail in:-

FIR No.	Dated	Police Station	Sections
67	24.06.2020	Rori, District Sirsa	22 (c) of the NDPS Act

- 2. Version of the prosecution is that FIR, Annexure P-1, has been registered on the basis of suspicion and a motorcycle with three riders was intercepted. Bhola Singh was driving the two wheeler, Ranjit Singh was sitting in between, carrying a plastic bag, and Harmandeep Singh @ Boora

was sitting behind. On examination of the contents of the plastic bag, it was found to contain 1390 tablets of Tramadol Hydrochloride 100 mg each.

3. Counsel for the petitioner contends that the petitioner has not been named as an accused in the FIR. He submits that on the disclosure statement of the above mentioned three accused, one, Dhani Singh, was arrested, who in his statement recorded in custody, stated that the contraband was supplied by Kulwinder Singh @ Mor, present petitioner. Counsel urges that the statement made by an accused in custody is not admissible in evidence. He has placed reliance upon the judgment of the Hon'ble Supreme Court in *Tofan Singh Versus State of Tamil Nadu, 2021 (4) SCC 1*. He submits that besides the present FIR, petitioner has been arraigned as an accused, again on the basis of a disclosure statement in another FIR, which has been registered after the present criminal case. By referring to order dated 29.10.2020 passed by this Court, Annexure P-3, counsel submits that the petitioner was released on interim bail as FSL report was awaited and the petitioner surrendered back on time. Counsel submits that the petitioner has been falsely implicated due to political rivalry at the village level.

4. *Per contra*, State counsel, upon instructions from ASI, Surjeet Singh, has opposed the petition and has submitted that as the total weight of the contraband recovered is 1168.99 gm and it falls within the ambit of commercial quantity. He asserts that rigor of Section 37 of the NDPS Act will apply. He could not dispute that no recovery has been effected from the petitioner in the present case. As per his instructions, two out of eleven prosecution witnesses have been examined.

5. I have heard counsel for the parties and considered their respective submissions.
6. Undisputedly, petitioner was not found in possession of any prohibited substance. As per Custody Certificate dated 21.02.2023, which is on the record, petitioner has been in custody for more than one year as on the said date. Trial is at a nascent stage and most of the prosecution witnesses are yet to be examined. Keeping in view the above factors, this Court is prima facie of the view that the petitioner deserves to be enlarged on bail.
7. Without adverting to the merits or demerits of the arguments addressed by counsel for the parties, petition is allowed. Petitioner is ordered to be released on bail on furnishing adequate bail/surety bonds to the satisfaction of the Area Magistrate/Duty Magistrate/Trial Court concerned.
8. It is clarified that nothing said hereinabove shall be construed to be an expression of opinion on the merits of the case.

(SUVIR SEHGAL)
JUDGE

28.08.2023
Kamal

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No