

216-2

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

**CRM-M-20083-2023
Date of Decision: 24.07.2023**

Birbhadar @ Kalu

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Arjun Veer Sharma, Advocate
for the petitioner.

Mr. Harjinder Singh Sidhu, AAG, Punjab.

HARSH BUNGER J.

1. Petitioner (Birbhadar @ Kalu) has filed the present petition under Section 439 of the Code of Criminal Procedure seeking grant of regular bail in case bearing FIR No.63 dated 04.06.2021 (Annexure P-1), under Sections 22, 25 and 29 of the Narcotic Drugs and Psychotropic Substances Act, registered at Police Station Barnala, District Barnala.
2. Upon issuance of notice, reply by way of affidavit dated 17.05.2023 of Mr. Satvir Singh, P.P.S., Deputy Superintendent of Police, Sub Division Barnala, District Barnala is filed by learned State counsel in Court, which is taken on record, subject to all just exceptions.
3. Custody certificate dated 18.05.2023 of the petitioner has been filed on behalf of State of Punjab.
4. Briefly, the aforesaid case FIR was registered on the basis of a

ruqa sent by Sub Inspector Baljit Singh, Police Station Barnala, who stated that on 04.06.2021, he along with other police officials, while carrying laptop, printer and investigation kit along with them, were present at T-point, Pharwahi on government vehicle bearing registration No.PB-13-BA-1862, for patrolling and search of suspected persons and at about 8:00 P.M., a secret information was received that Amandeep Singh @ Tili s/o Balvir Singh, who was habitual of selling intoxicant tablets at Village Pharwahi and Sekha etc., which were bought from outside, was coming from Barnala to Village Pharwahi on his motorcycle bearing registration No.PB-10-DF-4626 for selling the intoxicating tablets to his customers and in case barricading is done on the way then he could be caught along with the intoxicant tablets. Finding the same to be true and reliable, a *ruqa* was prepared and sent to the police station for registration of the FIR.

5. As per the reply filed by learned State counsel, upon receipt of the *ruqa*, Assistant Sub Inspector Gural Singh along with the police party reached at the spot and started conducting search near Bridge, Pharwahi-Barnala Road, when one motorcycle bearing registration No.PB-10-DF-4626, being driven by a person wearing turban, was seen coming from Barnala towards Village Pharwahi and the same was stopped by the police party and on inquiry, the rider disclosed his name as Amandeep Singh @ Tili s/o Balvir Singh. After following the due procedure, search was conducted, whereupon total 2000 (200 strips containing 10 tablets in each strip) of intoxicant tablets make '*Celludol 100-SR B.No.UFT.040 MFG.04/2021 Exp.03/2023*' were recovered from the bag hanging on the handle of the aforesaid motorcycle, and accordingly

Amandeep Singh @ Tili was arrested as per the procedure and the motorcycle along with its original registration certificate issued in the name of one Kuldeep Singh s/o Amar Singh was also taken into police custody. Upon personal search of Amandeep Singh @ Tili, one mobile (make Vivo, golden colour) having mobile No.98766-93730 and one indian currency note of Rs.100 were recovered. It is stated that during investigation, the aforesaid Amandeep Singh @ Tili suffered a disclosure statement that he used to sell the intoxicant tablets after bringing the same from Birbhadar @ Kalu (petitioner) s/o Vijay Kumar, Lakhwinder Singh @ Bunty s/o Paramjit Singh and Kamal Kumar s/o Raj Kumar. Accordingly, the said three persons were also nominated as accused in the instant case on 06.06.2021 and Section 29 of the Narcotic Drugs and Psychotropic Substances Act was added. On 21.07.2021 on the basis of a secret information, the aforesaid Birbhadar Singh @ Kalu (petitioner) was arrested by Assistant Sub Inspector Gurpal Singh and upon disclosure statement of petitioner, 1250 intoxicant tablets containing salt *Tramadol* were recovered digged under the root of a *peepal* tree near Pharwehi road. As per the reply, on the disclosure statement of the aforesaid Birbhadar Singh @ Kalu (petitioner), Parveen Sharma and one Mohit Kumar @ D.P. were nominated as accused in this case. On 28.07.2021, Parveen Sharma @ Golu @ Goldy was arrested and subsequently on 02.08.2021, aforesaid Mohit Kumar @ D.P. was also arrested and on his disclosure statement, one Sandeep Kumar @ Pandu was nominated as an accused in this case, who was arrested on 05.08.2021 and then one Lakhwinder Singh @ Bunty was arrested in the instant case on 23.08.2021.

6. Learned counsel for the petitioner submits that the petitioner is

innocent and he has been falsely implicated in the aforesaid case FIR No.63 dated 04.06.2021 on the basis of a secret information and disclosure statement suffered by one Amandeep Singh @ Tili. It is submitted that the prosecution has shown false recovery of 125 strips (each containing 10 tablets, thus total 1250 tablets) of intoxicant tablets from the petitioner. Learned counsel for the petitioner contends that the provisions of the Narcotic Drugs and Psychotropic Substances Act have not been followed in this case.

7. Learned counsel for the petitioner submits that co-accused Lakhwinder Singh has already been granted regular bail by a co-ordinate Bench of this Court vide order dated 20.02.2023 passed in CRM-M-7635-2023 and co-accused Sandeep Singh @ Saini and Mohit Kumar @ D.P. @ Mohit Kukreja have also been granted regular bail vide common order dated 25.01.2023 passed in CRM-M-50447-2022 and CRM-M-53554-2022. It is stated that the petitioner has not committed any offence as alleged in the instant case. Learned counsel for the petitioner submits that the petitioner is in custody for a period of one year, nine months and twenty five days (as on 18.05.2023) and investigation in the case is complete, challan stands presented on 29.11.2021 and even charges have been framed on 22.12.2021 and out of total thirty two prosecution witnesses, ten witnesses have been examined; hence trial in the case is likely to take some time to conclude and no useful purpose would be served with further incarceration of the petitioner. Learned counsel for the petitioner submits that the petitioner 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. Per contra, learned State counsel opposes the plea of petitioner for grant of regular bail on the ground of seriousness and gravity of the offence. While referring to the custody certificate, learned State counsel submits that the petitioner does not have clean antecedents as he is also involved in eight other cases, however, none of those is under the Narcotic Drugs and Psychotropic Substances Act. Further while referring to the reply, learned State counsel submits that commercial quantity of *Tramadol Hydrochloride* (as per the the Forensic Science Laboratory Report dated 19.08.2021) was recovered from the petitioner and thus rigors of Section 37 of the Narcotic Drugs and Psychotropic Substances Act are attracted in this case. It is submitted by learned State counsel that the petitioner has committed a crime of serious nature and in case he is released on bail, he might influence the witnesses and also abscond and delay the trial. Accordingly, prayer for dismissal of the instant petition has been made.

9. Learned counsel for the petitioner, in rebuttal, has relied upon the judgment of Hon'ble Supreme Court in ***Maulana Mohd. Amir Rashadi v. State of U.P. and another, 2012(2) SCC 382*** to contend that the facts and circumstances of the present case are to be seen while deciding a bail application and the bail application of the petitioner cannot be rejected solely on the ground that the petitioner is involved in other cases. The relevant portion of the said judgment is reproduced herein below :-

“As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.”

10. I have heard learned counsel for the parties and perused the paper book as well as the reply and custody certificate of the petitioner.

11. In this case, the petitioner is in custody for a period of one year, nine months and twenty five days (as on 18.05.2023). Investigation in the case is complete, challan stands presented on 29.11.2021 and even charges have been framed on 22.12.2021. As per the reply, out of total thirty two prosecution witnesses, ten witnesses had been examined, thus trial in the case is likely to take some time to conclude. It is not disputed by learned State counsel that co-accused Lakhwinder Singh, Sandeep Singh @ Saini and Mohit Kumar @ D.P. @ Mohit Kukreja have already been granted regular bail in the instant case.

12. So far as the apprehension expressed by learned State counsel that the witnesses could be influenced by the petitioner, suffice it to state that in the event of any such conduct, the prosecution can always approach the competent Court for cancellation of bail. Accordingly, it is observed that the State/Prosecuting Agency/State police shall be at liberty to observe the behaviour of the petitioner during the bail period, and in case it feels that the petitioner is indulging in influencing any of the witnesses or tampering with the prosecution evidence in any manner or otherwise causing interference with the progress of trial, it shall be open for the State/Prosecuting Agency/State police to move to the trial Court for cancellation of the bail, which shall be decided by the trial Court on merits.

13. Keeping in view the aforementioned circumstances, the present petition is allowed and the petitioner is ordered to be released on regular bail (if not required in any other case), 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/trial and any change in the address shall be communicated to the concerned Station House Officer, forthwith. The petitioner would also furnish his telephone number to the concerned Station House Officer. He would also furnish his undertaking to the effect that he will not indulge in any illegal activity. The petitioner shall also appear before the concerned Police Station/Station House Officer on first Monday of every month till the conclusion of trial.

14. In addition, the petitioner (or anyone on his behalf) shall prepare a Fixed Deposit Receipt (F.D.R.) in the sum of Rs.1,00,000/- and submit the same with the trial Court. The same would be liable to be forfeited as per law, in case the petitioner remains absent from trial without any sufficient cause.

15. 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.

16. The petition is accordingly disposed of.

17. All pending application(s), if any, shall also stand closed.

24.07.2023

Apurva

(HARSH BUNGER)
JUDGE

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No