

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

CRM-M-21422-2023 (O&M)
Date of Decision: 02.11.2023

SATISH KUMAR

...Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Gurpal Singh Sandhu, Advocate
for the petitioner.

Mr. Vipin Pal Yadav, Addl. A.G., Punjab.

HARSH BUNGER, J. (ORAL)

1. Petitioner (Satish Kumar) has filed this second petition under Section 439 of the Code of Criminal Procedure seeking grant of regular bail in case bearing FIR No.0166 dated 09.07.2022 under Sections 15, 21 and 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station City Sri Muktsar Sahib, District Sri Muktsar Sahib.
2. The first petition bearing ***CRM-M-47478-2022*** filed under Section 439 of the Code of Criminal Procedure by the petitioner was withdrawn vide order dated 28.02.2023 passed by this Court.
3. Pursuant to the advance copy of petition having been served upon learned State counsel, status report by way of an affidavit of Sh. Satnam Singh, PPS, Deputy Superintendent of Police, Sub-Division Sri Muktsar Sahib, District Sri Muktsar Sahib on behalf of respondent No.1-State of Punjab, has been filed, which is already on record.

4. Custody certificate dated 01.11.2023 of the petitioner has been filed by learned State counsel in the Court today and the same is taken on record, subject to all just exceptions.

5. Succinctly, the afore-said case FIR has been registered on the basis of *ruqa* prepared by Balwinder Singh ASI, Police Station City Sri Muktsar Sahib; wherein it was stated that on 09.07.2022, he alongwith his fellow employee was going towards Goneana Road, Abohar Road etc. in a private vehicle for patrolling and checking of suspicious person. It was stated that when the police party reached near Cremation ground, Goneana Road, Sri Muktsar Sahib, secret informer gave an information that Bullet son of Bhola Singh, resident of Gali No.04, Goneana Road, Sri Muktsar Sahib, Baba Kattar, resident near Baba Charan Dass Dera Goneana Road, Sri Muktsar Sahib, Nikka son of Gora, resident of Goneana Chowk, Sri Muktsar Sahib, Deepu son of Kakku Kabaria, resident of Goneana Road, Gali No.03, Sri Muktsar Sahib, Kamaljit Kaur wife of Jaskaran Singh resident of Gurgapuri Basti, Gali No.09, Sri Muktsar Sahib, Rajinder Kumar son of Jagan Nath, resident of in front of Tari Di Hatti, Goneana Road, Sri Muktsar Sahib, Jimmy resident of Gali No.15, Goneana Road, Sri Muktsar Sahib and Geja resident of Safaidiya Wali Basti, Goneana Road, Sri Muktsar Sahib, are indulged in the sale of narcotic/drugs and in case, a raid is conducted then they can be apprehended with huge quantity of *heroin/intoxicant tablets/drugs* etc.

6. Accordingly, on the basis of the afore-said *ruqa*, the FIR in question, was registered against the accused persons. As per the status report, upon the raid being conducted; accused Kattar Singh @ Kattar Baba and Pardeep Kumar @ Deepu, were arrested on 09.07.2022, from whom,

780 Nos. and 810 Nos. of intoxicating tablets, respectively were recovered, which were taken into the police custody after following the due procedure. It is further mentioned in the status report that during questioning, accused Pardeep Kumar @ Deepu disclosed that his brother Satish Kumar son of Rajinder Kumar (present petitioner) is also engaged in selling and consuming the intoxicants; accordingly, Satish Kumar (petitioner) was nominated as an accused on 11.07.2022. As per status report, petitioner-Satish Kumar was arrested on 12.07.2022 and 105 Nos. *Alpracan tablets* were recovered from him and hence, the offence under Section 27 of the Narcotic Drugs and Psychotropic Substances Act, was added vide DDR No.46 dated 29.10.2022. It is mentioned in the status report that the total recovery in the FIR is 2150 Nos. *intoxicant tablets*, 55 grams *intoxicating powder* and 03 Kgs. *poppy husk*, which were sent to the Forensic Science Laboratory, Bathinda and the FSL reports (Annexures R-1, R-2, R-3 and R-4) were received in that regard and the recovered contraband is accordingly stated to be falling within the ambit of commercial quantity.

7. Learned counsel for the petitioner submits that the petitioner has not been named in the FIR and has been nominated on the basis of disclosure statement of co-accused namely, Pardeep Kumar @ Deepu and approximately 105 Nos. of *Alpracan tablets* have been shown to be recovered from the petitioner. Learned counsel further submits that the said recovery has been foisted upon the petitioner and even otherwise, recovery of 105 Nos. of *Alpracan tablets* comes to 16 grams of *Salt Alprazolam*, which would fall under the category of intermediate quantity and the rigors of Section 37 of the NDPS Act, would not be applicable. It is further submitted that in fact, the petitioner has no concern with the alleged crime

and he was arrested in relation to some other case as would be borne out from the newspaper cutting (Annexure P-4). It is submitted that the petitioner has been in custody since 12.07.2022 and till date, he has undergone custody of more than 01 year and 04 months (as on 01.11.2023). It is submitted that the other co-accused in this case FIR namely, Manjeet Kaur, Sukhjeet Kaur @ Mandeep Kaur, Jasvir Kaur and Kashu @ Kash, have already been granted regular bail vide **CRM-M-39961-2022**, **CRM-M-40996-2022**, **CRM-M-42299-2022** and **CRM-M-54941-2022**, respectively and the said bail orders have been attached with the petition collectively as Annexure P-3. Learned counsel for the petitioner has also handed over the orders dated 19.01.2023 and 30.05.2023 passed by this Court, granting regular bail to other accused namely, Ravi Singh @ Bullet and Lovepreet Singh alias Jimmy, vide **CRM-M-1899-2023** and **CRM-M-14087-2023**, respectively in the Court today, which are taken on record, subject to all just exceptions and marked as **Mark 'A'**. It is submitted that the investigation in the case is complete and the challan was presented on 13.12.2022 and even a supplementary challan against another co-accused has been filed on 30.03.2023. It is submitted that the trial is likely to take some time to conclude. Learned counsel for the petitioner has further submitted that the petitioner is ready to abide by all the conditions as may be imposed by this Court or by the trial Court. Learned counsel further submits that the petitioner is also willing to furnish security in the form of Fixed Deposit Receipt (F.D.R.) before the concerned Court, so as to ensure his presence before the Court on each and every date of hearing. Accordingly, prayer for grant of regular bail is made.

8. On the other hand, learned State counsel opposes the plea of petitioner for grant of regular bail on the ground of seriousness of offence and also that the petitioner is a habitual offender as he is involved in about 25 cases and in case, he is enlarged on regular bail then he may tamper with the evidence and influence the material witnesses or he may abscond and flee from justice which may delay the trial. However, it is not disputed by learned State counsel that the petitioner is in custody since 12.07.2022 and that the challan has already been presented in the Court and the other co-accused in this case have already been granted regular bail. It is also not disputed that the alleged recovery from the petitioner alone falls under the category of intermediate quantity and also that the petitioner has been nominated as an accused on the basis of a disclosure statement of another co-accused.

9. I have heard learned counsel for the parties and perused the paper book; status report as well as custody certificate with their able assistance.

10. In the instant case, initially the FIR was registered against nine accused namely, (i) Ravi Singh alias Bullet son of Bhola Singh (2) Kattar Singh @ Kattar Baba son of Natha Singh (3) Nikka son of Gora (4) Akashdeep Singh alias Kashu son of Suraj Singh alias Bhinda (5) Pardeep Kumar alias Deepu son of Rajinder Kumar alias Kukku Kabaria (6) Kamaljeet Kaur wife of Jaskaran Singh (7) Rajinder Kumar son of JaganNath (8) Lovepreet Singh @ Jimmi son of Baldev Singh and (9) Geja Singh son of Kaur Singh, on the basis of secret information received by the police alleging that they are indulged into illegal activities of selling the intoxicating articles. The petitioner was nominated as an accused

on the basis of a disclosure statement made by Pardeep Kumar @ Deepu, who was stated to be the brother of the petitioner herein. As per the status report, 105 tablets mark Alpracan were recovered from the petitioner and the following report dated 30.08.2022 of the 'Regional Testing Forensic Science Laboratory Bathinda, Punjab' has been submitted :-

<i>Articles Received</i>	<i>One parcel alleged to be seized from S/v Satish Kumar @ Romi, sealed with one seal of 'RP' and alleged to contain Intoxicating Tablets.</i> <i>Seal on the parcel was found intact and tallied with the specimen seal impression.</i> <i>On opening the parcel was found to contain fifteen (15) peach coloured tablets in a strip labelled as 'ALPRACAN-0.5' (Alprazolam Tablets IP 0.5 mg, Batch No.CBT-0184/22, MFG. 03/2022, EXP. 02/2024).</i> <i>Average Weight = 160.82 mg/tablet</i>
<i>Purpose of reference</i>	<i>Analysis and Report</i>

Identification & Tests :

<i>Ingredient present</i>	<i>Average quantity of ingredient present in the parcel.</i>
<i>Alprazolam</i>	<i>0.48 mg/tablet</i>

REPORT

The tablets contained in the parcel under reference have been analyzed by chemical, TLC and instrumental analysis. On the basis of analysis, the ingredient along with its quantity found present has been given at serial No.8 (Identification and Tests) of this report.”

11. A perusal of the afore-said FSL report would manifest that the alleged recovery made from the petitioner i.e. Alpracan-0.5 is stated to have

contain 16 grams of Alprazolam salt, which would fall under the category of intermediate quantity. Although, it is sought to be contended by the learned State counsel that the total recovery in the instant case FIR would fall under the category of “commercial quantity”; however, the same would be a debatable issue during the course of the trial.

As regards the plea of the learned State counsel that the petitioner is involved in 25 other cases, 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 he/she 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.”

12. Even otherwise, a perusal of the custody certificate would indicate that the petitioner has been in custody for the last more than 01 year and 04 months (as on 01.11.2023) and in all the cases wherein the petitioner is stated to be involved; the petitioner is on bail. It is not disputed that the investigation in this case is complete and the challan already stand presented; thus, the trial is likely to take some time. Furthermore, the other co-accused have already been granted regular bail.

Considering the totality of circumstances, in my considered view, the petitioner would be entitled to regular bail.

13. So far as the apprehension expressed by learned State counsel that the witnesses could be influenced by 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 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 the trial Court for cancellation of bail, which shall be decided by the trial Court on merits.

14. In view of the above discussion, present petition is allowed and the petitioner namely, Satish Kumar is ordered to be released on regular bail 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 every Monday of each month till the conclusion of trial.

15. In addition, the petitioner (or anyone on his behalf) shall prepare a Fixed Deposit Receipt (F.D.R.) in the sum of Rs.2,00,000/- 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.

16. Nothing expressed here-in-above 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.

17. The petition is accordingly disposed of.

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

November 02, 2023
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No