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

**CRM-M-30936-2022(O&M)**

**Date of Decision: 21.03.2023**

SHIV KUMAR

....Petitioner

Versus

STATE OF PUNJAB

...Respondent

**CORAM: HON'BLE MR. JUSTICE HARSH BUNGER**

Present : Mr. G.S. Sandhu, Advocate  
for the petitioner.

Mr. Harjinder S. Sidhu, AAG, Punjab.

**HARSH BUNGER, J. (Oral)**

The instant petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No.215 dated 06.08.2021 registered under Section 22-B of Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station City Sri Muktsar Sahib, District Sri Muktsar Sahib.

Custody certificate dated 20.03.2023 of the petitioner filed by the learned State counsel is taken on record, subject to all just exceptions.

Succinctly, on 06.08.2021, the Police officials, on a private vehicle were going towards the Old Grain Market, which is near New Grain Market for patrolling and checking. When the Police party reached near the old grain market, they saw two haircut boys coming walking towards them and both of them were having one white polythene bag each in their hands. On seeing the Police party they tried to run away from the spot after throwing the white colour polythene bags, however they were apprehended and upon inquiry they told their names as Shiv Kumar S/O Rakesh Kumar

and Raj Kumar S/O Rakesh Kumar R/O Aare Wali Street No.2, Mour Road, Sri Muktsar Sahib. The Police expressed their doubt about white colour polythene bags having contained some intoxicating substance. After carrying out necessary procedures, the petitioner was found in conscious possession of 420 tablets of Cloviedol-100 SR tablets, which he was carrying without any permit or license. Accordingly, the aforesaid FIR was registered.

Learned counsel for the petitioner submits that the petitioner is innocent and has been falsely implicated in the present case and nothing was recovered from the petitioner. Learned counsel for the petitioner submits that FIR in the present case indicates that alleged quantity of recovered contraband, which is shown to be recovered from the polythene bag allegedly thrown by the petitioner, fall in the category of non-commercial quantity. It is further submitted that the Police had wrongly involved the petitioner in the present case and the alleged contraband has been planted upon the petitioner by the investigating agency, for the reasons best known to them. Learned counsel further submits that the petitioner is in judicial custody since 06.08.2021. Investigation in this case is complete, challan stands submitted on 06.10.2021 and charges were framed on 24.11.2021. Learned counsel submitted that the petitioner is not involved in any other case and the trial is likely to take long time and no useful purpose would be served by keeping him behind the bars any further. It is submitted that the petitioner had applied for grant of regular bail before the learned Additional Sessions Judge, Sri Muktsar Sahib and before this Court, which have wrongly been dismissed vide orders dated 07.09.2021 (Annexure P-2) and 17.01.2022 (Annexure P-3) respectively. 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.

Learned State counsel opposes the plea of petitioner for grant of regular bail on the ground of seriousness of the offence. Learned State counsel further submits that as per the report of FSL, the tablets seized from the petitioner were tramadol hydrochloride and total 840 tablets of tramadol hydrochloride were seized, however, it is not disputed that two recovery memos were prepared in this case, accordingly the recovery from petitioner is 420 tablets of tramadol hydrochloride, which would fall under the category of “non-commercial” quantity. Learned State counsel does not dispute the fact that there is no other case pending against the petitioner. It is also not disputed that the present petitioner has been in custody since 06.08.2021 challan stands submitted and charges have been framed and the trial is likely to take some time.

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

In this case, petitioner has been in custody since 06.08.2021 i.e. more than one year and seven months. Investigation in this case is complete, challan stands presented on 06.10.2021, charges were framed on 24.11.2021. As per status report, there are total 13 witnesses and no witness has been examined till date. Hence, trial is likely to take long time and no useful purpose would be served by keeping the petitioner behind bars.

A perusal of FIR would show that separate offers were made to petitioner and his co-accused and as per status report also, separate recovery memos were prepared in respect of recovery from petitioner and his co-

accused. Presently it cannot be said that there was any abetment or criminal conspiracy within the meaning of Section 29 of Narcotic Drugs and Psychotropic Substances Act between petitioner and his co-accused.

Thus, the alleged individual recovery from petitioner would fall under the category of “non-commercial” quantity and hence rigors of Section 37 of Narcotic Drugs and Psychotropic Substances Act are not attracted.

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/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 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 and inform in writing that he is not involved in any other crime other than the case mentioned in the present order.

In addition, the petitioner (or any one on his behalf) shall prepare a FDR in the sum of Rs.50,000/- 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.

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.

The petition is accordingly disposed of.

21.03.2023

Amandeep

(HARSH BUNGER)

JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No