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

**CRM-M-28846-2022 (O&M)
Date of decision :08.08.2023**

Bunty

...Petitioner(s)

Versus

State of Punjab

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Manoj R. Sharma, Advocate,
for the petitioner.

Mr. Joginder Pal Ratra, Sr. DAG, Punjab.

MAHABIR SINGH SINDHU, J.

Present petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 (*for short 'Cr.P.C'*) for grant of bail pending trial to the petitioner in FIR No.24 dated 27.03.2022, registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (*for short 'the NDPS Act'*) at Police Station Garhdiwala, District Hoshiarpur.

2. Allegations against the petitioner are that he was found in possession of 1008 intoxicating capsules without any valid licence or permit.

3. Learned counsel for the petitioner contends that alleged contraband was in loose condition; therefore, the entire quantity of the same ought to have been sent for chemical examination, instead of

sending only 10 (ten) capsules. In support of his assertion, learned counsel has placed reliance on the following judicial precedents:-

- (i) ***State of Punjab Vs. Dharam Singh (P&H) (DB)***, Criminal Appeal No.556-DBA of 1999, decided on 06.01.2010;
- (ii) ***Harjinder Kaur Vs. State of Punjab (P&H)***, CRM-M-13826-2019, decided on 22.04.2019.
- (iii) ***Manjinder Singh @ Money Vs. State of Punjab (P&H)***, CRM-M-11104-2021, decided on 12.10.2021;
- (iv) ***Karamjit Singh Alias Karmu Vs. State of Punjab (P&H)***, CRM-M-19616 of 2022 decided on 01.09.2022

Further contended that the petitioner is in custody since 27.03.2022; after framing of the charges, trial is pending for recording prosecution evidence on 18.08.2023; hence it is likely to take sufficiently long time. Lastly contended that there is no other criminal case pending against the petitioner.

4. On the other hand, learned State counsel opposed the prayer while submitting that contraband recovered from the petitioner is found to be commercial in nature. Also submitted that vide order dated 28.03.2022, learned Judicial Magistrate First Class, Dasuya (for short, 'JMFC') had drawn two samples (10 capsules each) from the contraband and out of which, one sample was sent to the Chemical Examiner. For reference, the aforesaid order dated 28.03.2022, is taken on record as Mark 'X'. Also contended that report dated 11.05.2022 received from the Chemical Examiner clearly indicates that contraband

recovered from the petitioner is found to be Tramadol Hydrochloride; hence in view of the bar under Section 37 of the NDPS Act, he is not entitled for bail pending trial.

5. Heard both sides and perused the paper-book.

6. Before proceeding further, it is necessary to recapitulate the order dated 28.03.2022, passed by learned JMIC under Section 52A of the NDPS Act, and which reads as under:-

“ Case property as mentioned in Table No.1 below has been produced before the undersigned being Illaqa Magistrate.

Sr. No.	Parcel Type	Name of the Contraband (As provided by investigating agency)	Quantity of contraband	Sealed with seals bearing impression
1.	Bulk	Loose Intoxicant Capsules having Marka “SPM-PRX WOCKHARDT” (Blue Colour)	1008	BS & ND

2. *The above mentioned case property is in sealed condition and the seals bearing impression BS & ND were intact. The SHO concerned moved an application for certifying the case property as per section 52A of NDPS Act, 1985. Case property seen.*

3. *The sample seals seen and compared. The bulk parcel is opened separately. Two court sample as mentioned in the Table No.2 below has been drawn from the bulk parcel and then the bulk parcel and the sample parcel have been sealed with the seals as described in the Table No.2 below:-*

Table No.2

Sr. No.	Parcel Type	Name of contraband as provided by Investigating Agency	As quantity contraband	Sealed with seals bearing impression
1.	Bulk	Intoxicant Capsules	988	VK
2.	Sample	Intoxicant Capsules	10	VK
3.	Sample	Intoxicant Capsules	10	VK

4. *One sample of 10 intoxicant capsules drawn U/s 52-A of NDPS Act, 1985 (from bulk parcel as mentioned above in table No.2) is handed over to Investigating Officer stated above for sending it to the office of Chemical Examiner for test examination.*

5. *The bulk parcel and one sample as mentioned in Table No.2 above, have been handed over to Investigating Officer stated above. The second sample be deposited in the Central Malkhana, Hoshiarpur and the bulk be disposed off as per rules.*

6. *It is certified that sample, as mentioned in the Table No.2 above has been drawn in the presence of undersigned as per rules and the bulk parcel mentioned in the Table No.2 has been seen and got sealed in the presence of undersigned as per rules. Photograph taken. Sample seal of the undersigned bearing impression "VK" also prepared. Three copies of Form M-29 filled in the presence of undersigned out of which two copies were handed over to the I.O and one is taken to the records of the Court. The I.O is directed to get develop the photographs and be produced in the Court.*

7. *The case property i.e. one bulk parcel, which was originally produced before the undersigned, has not been disputed by the accused nor any objection in this regard has been raised by the accused during the entire process before the undersigned.*

8. *The application under section 52-A of NDPS Act, 1985, regarding the case property is disposed off accordingly. Copy of this order be given to the Investigating Officer for information and compliance. Papers be sent back to the concerned Court immediately.*

Dated:-28.03.2022

Varinder Kumar, PCS,

*Judicial Magistrate Ist Class,
Dasuya”*

7. Although, from perusal of the above extract, it is discernible that quantity of contraband (1008 capsules) were in loose conditions, but the same were sealed on the spot bearing impressions BS & ND. As per the aforesaid order, seals were intact when the case property was produced before learned JMIC by the police. Also discernible that sample seals were seen and duly compared by the Magistrate. After opening the bulk parcel, 02 samples were drawn by learned JMIC. Out of them, 01 parcel duly sealed, by learned JMIC, bearing impression ‘VK’ containing 10 intoxicant capsules having *Marka* “SPM-PRX WOCKHARDT” was sent to the Chemical Examiner and the second sample was handed over to the Investigating Officer to be deposited in the Central Malkhana along with remaining bulk. Even the photograph was also taken by learned JMIC and apart that, it is recorded that bulk parcel was not disputed by the accused, nor any objection in this regard was raised by him during the entire process.

8. In view of the above, this Court is of the opinion that learned JMIC has followed the proper course and taken all possible requisite safeguards while drawing & sending the sample to the Chemical Examiner.

9. Even from the perusal of report dated 11.05.2022, it is apparently clear that sample seal affixed by learned JMIC (‘VK’) was found to be intact and contraband was found as Tramadol

Hydrochloride and for reference, para Nos.6 & 8 of report are extracted as under:-

“6.Articles received: *One parcel alleged to be sealed from S/v Bunt sealed with one seal of ‘VK’ alleged to contain intoxicating material. Seal on the parcel was found intact and tallied with the specimen seal impression. On opening the parcel was found to contain ten (10) loose capsules of sky-blue colour. Words ‘SPM-PRX+ WOCKHARDT’ were imprinted on each capsule shell. Average weight = 607 mg/capsule*

8.Identification &Tests :
Tramadol Hydrochloride:Found present, average 48.60 mg/capsule in the capsules contained in the parcel.
Acetaminophen (Paracetamol) :Found present in the capsules contained in the parcel
Dicyclomine : -do- Hydrochloride”

10. Although, learned counsel for the petitioner relied upon judicial precedents noticed hereinabove, but same are not helpful in any manner. The course adopted by learned JMIC in the present case was not followed in either of the cases cited by the petitioner; rather in all those cases, samples were drawn by the Police Officer(s). It is also noteworthy that in the present case, 1008 capsules were allegedly recovered from the petitioner and which is not a small quantity, therefore, there is no justification to send the entire bulk for chemical examination.
11. Even otherwise, it would be a matter of trial as to whether there is any violation of the provisions of NDPS Act or Rules framed

thereunder or any mandatory circular while sending the sample; hence, no definite opinion can be recorded at this stage while deciding the bail application.

12. Consequently, the contention of petitioner that instead of sending 10 capsules, the entire contraband ought to have been sent for chemical examination, is liable to be rejected.

13. Since the recovery alleged in the present case is commercial in nature; therefore, in view of the interdict under Section 37 of the NDPS Act, this Court is not inclined to accept the prayer of petitioner for granting bail pending trial and as such, present petition is dismissed.

14. In view of the above, there is no option except the dismiss the present petition.

15. Ordered accordingly.

16. The above observations may not be construed as an expression of opinion on merits of the case; rather confined only to decide the present bail matter.

17. However, keeping in view the custody of the petitioner, learned trial Court is requested to proceed in the matter expeditiously, if there is no legal impediment.

18. Pending application(s), if any, shall also stand disposed off.

08.08.2023
atulsethi

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking / reasoned :	Yes	No
Whether Reportable :	Yes	No