

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.216

Case No. : CRM-M-27205-2022

Date of Decision : April 18, 2023

Rahul Petitioner
vs.
State of Punjab Respondent

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. Rishu Mahajan, Advocate
for the petitioner.

Ms. Himani Arora, AAG, Punjab.

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GURBIR SINGH, J. :

Prayer in this petition filed under Section 439 Cr.P.C. is for grant of regular bail to the petitioner in case FIR No.221 dated 30.12.2021, under Section 22 of the NDPS Act, 1985, registered at Police Station C-Division, District Amritsar.

Status Report by way of affidavit of Ashwani Kumar, PPS, Assistant Commissioner of Police, South, Amritsar, Amritsar City (Temporary Charge), has been filed on behalf of State of Punjab, which is ordered to be taken on record.

The case in question was registered on the basis of secret information that the petitioner, who was declared Proclaimed Offender in another case, was present outside his house and was dealing in intoxicant tablets and capsules and if raid was conducted, then huge amount of intoxicant tablets and capsules can be recovered from him. After sending

Ruqa for registration of the case, police raided the disclosed place and the petitioner was arrested. The petitioner made disclosure statement that he along with his friend Vicky @ Laddu was involved in the sale of intoxicant tablets and capsules to the drug addicts. A few days ago, they had purchased huge amount of intoxicant tablets and capsules from some unknown person, out of which some intoxicant tablets had already been sold and the remaining intoxicant tablets were kept concealed by them at the residence of co-accused Vicky @ Laddu. The police party proceeded to the house of co-accused Vicky @ Laddu and recovered a polythene containing loose intoxicant tablets from the bed lying in the house of co-accused Vicky @ Laddu. On checking, those were found to be 3600 white coloured loose intoxicant tablets. As per report of Forensic Science Laboratory, the tablets were found containing "*Tramadol Hydrochloride*".

Learned counsel for the petitioner has submitted that no recovery was effected from the conscious possession of the petitioner. Recovery, if any was effected, the same was from the house of co-accused Vicky @ Laddu, who was granted interim anticipatory bail vide order dated 11.02.2022 passed in **CRM-M-5886-2022** (Annexure P-3) by a Co-ordinate Bench of this Court. The said order dated 11.02.2022 was made absolute vide order dated 10.11.2022 passed by this Court. It has been further submitted that no independent witness was joined at the time of recovery at the house of co-accused. It was mandatory for the Investigating Agency to join an independent witness from the locality, as per provisions of Section 100(4) Cr.P.C. The compliance of Section 42 of the NDPS Act was also not made. It has further been contended that the petitioner is in custody for the

last more than 01 year and 03 months.

In support of his contentions, learned counsel for the petitioner has relied upon CRM-M-57485-2022 titled Ranjit Singh @ Ranjit Kumar vs. State of Punjab, decided on 10.01.2023 by a Co-ordinate Bench of this Court, wherein opium was recovered and bail was granted on the ground that the recovery of contraband was marginally above the commercial quantity. Learned counsel has further relied upon CRM-M-37645-2021 titled Hari Yadav @ Hariya vs. State of Punjab, decided on 11.02.2022 by a Co-ordinate Bench of this Court.

On the other hand, learned State counsel, while placing on record the Custody Certificate dated 15.04.2023 of the petitioner, has opposed the prayer made by learned counsel for the petitioner by submitting that the petitioner is involved in four other cases, out of which two are under the NDPS Act. In one case, 100 intoxicant tablets and in the other case, 140 intoxicant tablets were recovered from the petitioner. He is facing trial in those cases as well. So, the petitioner is a habitual offender and does not deserve the concession of bail. However, she has fairly conceded that the petitioner is in custody for the last 01 year, 03 months and 17 days.

Heard.

In the case in hand, the recovery of contraband has been effected from the house of co-accused and not from the conscious possession of the petitioner. The co-accused has already been granted anticipatory bail. The case is pending for framing of charge.

Accordingly, without discussing the merits of the case but keeping in view the fact that completion of trial may take a long time, the

present petition is allowed and the petitioner is directed to be released on regular bail, on furnishing bail bonds/surety bonds, to the satisfaction of learned Trial Court/Duty Magistrate concerned.

In case the petitioner indulges in any of such activities in violation provisions of Narcotic Drugs and Psychotropic Substances Act, then the prosecution is free to move an application for cancellation of bail in this case.

However, nothing contained herein above shall be construed as an expression of opinion on the merits of the case.

April 18, 2023
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.