

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

CRM-M-35081-2022

Date of Decision: 01.03.2023

Harwinder Singh @ Kala

..... Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. S.P.S. Khaira, Advocate, for the petitioner.

Mr. Sandeep Kumar, Deputy Advocate General, Punjab.

Rajesh Bhardwaj,

Prayer in the present petition is for the grant of regular bail to the petitioner in a case FIR No.13 dated 12.01.2020, registered under Sections 22, 25, 29 of NDPS Act, at Police Station Sadar Jagraon, District Ludhiana.

Adumbrated facts of the case are that the FIR was registered on the statement of ASI Tota Singh. It was alleged that when he alongwith with his team was patrolling, they received a secret information that Harwinder Singh @ Kala is indulged in the business of selling intoxicant tablets on large scale. It was informed that he was coming in Maruti car bearing No.PB10AS4731 for supplying intoxicant tablets to some customer. Finding the information reliable, Ruqa was sent for registration of FIR against Harwinder Singh @ Kala under Sections 22, 25, 61, 85 of NDPS Act and report under Section 42 of the NDPS Act after preparation was sent to the area G.O. Naka was laid and the accused was stopped while coming in his car. On search of the car, a plastic bag containing four boxes of Tramadol Hydrochloride tablets was recovered. Total intoxicant tablets recovered were found to be 2000. The accused could not produce any bill,

licence/permit or any document for justifying the possession of the recovered intoxicant tablets. He was arrested by the Police party. The investigation commenced. The samples were taken, and were sent to FSL. On receipt of FSL report, the tablets recovered were found to be containing prohibited salt Alprazolam, Tramadol Hydrochloride. The accused petitioner approached the Court of learned Judge, Special Court, Ludhiana for grant of bail, who, after hearing the parties, declined the same vide order dated 13.05.2022. Aggrieved by the same, the petitioner has approached this Court by way of filing the present petition for grant of bail.

It has been vehemently contended by learned counsel for the petitioner that the petitioner has been falsely implicated in this case. He has submitted that no recovery has been effected from the petitioner. He submits that as per the case of the prosecution, recovery was made on the basis of the secret information, however, there is no compliance of Section 42 of NDPS Act as neither the secret information was reduced into writing nor it was sent to the immediate senior officer as per mandate of the statutory provisions of Section 42 of the NDPS Act. He further submits that the search and seizure has been conducted between the sun set and sun rise from the Maruti Car, but the mandatory provisions were not complied with. He submits that Form No.29M dated 13.01.2020 also shows that false recovery has been planted on the petitioner. He submits that the petitioner has no criminal antecedents and thus, he deserves to be granted bail in this case.

On the other hand, learned State counsel has opposed the submissions made by learned counsel for the petitioner tooth and nail. He has submitted that the secret information received was duly reduced into writing and the Ruqa was sent. He has submitted that there was specific

information regarding the petitioner on the basis of which naka was laid and the petitioner was intercepted by the police party. He submits that the petitioner was travelling in his private car and recovery was also effected from public place and hence, there is no violation of the provisions of Section 42 of NDPS Act as submitted by learned counsel for the petitioner. He further submits that though the petitioner was granted interim bail in this case, however, during trial he absented from the proceedings on 13.12.2021 and his bail/surety bonds were cancelled and forfeited to the State on 28.03.2022. As he did not appear before the trial Court, thus non-bailable warrants were issued for his arrest. He further submits that there is a heavy recovery of 2000 intoxicant tablets from the petitioner and on the receipt of FSL report, the same was found to be containing ingredients of Alprazolam, Tramadol Hydrochloride. He submits that the quantity recovered was weighing 812 grams, which falls in the category of commercial quantity, which attracts the provisions of Section 37 of NDPS Act. He further submits that out of total 18 prosecution witnesses, only 3 witnesses are examined so far. He submits that in these circumstances, the petitioner does not deserve to be granted bail.

Heard.

Evidently, a secret information was received by the police party on the basis of which naka was laid and the petitioner was stopped by the police party. On search of the car being driven by the petitioner, 2000 intoxicant tablets were recovered. On the receipt of the FSL report, the same was found to be containing Tramadol Hydrochloride weighing 812 grams, which falls in the category of commercial quantity. The provisions of Section 37 of NDPS Act are attracted in this case. Out of total 18 prosecution witnesses only 3 witnesses have been examined so far. In these

circumstances, this Court does not find any ground for believing that the petitioner is not guilty of offence alleged and that he is not likely to commit any offence while on bail. Resultantly, the present petition being devoid of any merit is hereby dismissed.

Nothing said herein shall be treated as an expression of opinion on the merits of the case.

01.03.2023

sharmila

Whether Speaking/Reasoned

Whether Reportable

:

:

Yes/No

Yes/No

(RAJESH BHARDWAJ)

JUDGE