

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CRM-M-48743-2021

Date of Decision: 1.5.2023

Amarjeet @ Chimtu

....Petitioner

VERSUS

State of Haryana

....Respondent

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Rajesh Nain, Advocate
for the petitioner.

Mr. Apoorv Garg, DAG, Haryana

KARAMJIT SINGH, J.

Prayer in the present petition under Section 439 of Code of Criminal Procedure is for grant of regular bail to the petitioner in case FIR No.241 dated 4.6.2021 registered for the offences punishable under Sections 22(C) of NDPS Act, Section 269 of IPC and Section 51(b) of Disaster Management Act IPC at Police Station City Tohana, District Fatehabad.

2. As per allegations appearing on record, the police recovered 193 strips each containing 10 tablets of Tramadol Hydrochloride 100 mg SR having batch No.MNB/07/644, MB/07/645 manufacturing date as January, 2021 and expiry date as December, 2022 from the petitioner and co-accused Sunil Kumar while they were traveling on a motorcycle. Both of them were arrested at the spot and the aforesaid medical intoxicants were taken into custody by the police.

3. Counsel for the petitioner submits that the petitioner has been falsely implicated in the present case and that the petitioner is in custody for the last more than 1 year and 10 months and that the trial is not progressing ahead. He further submits that as per prosecution version, 193 strips each containing 10 tablets were recovered but as per report of Forensic Science Laboratory (FSL), sample which was sent for analysis was having 10 loose tablets of Tramadol and said 10 loose tablets having no batch number could not be treated as representative sample of the total recovered medicines as are detailed in the FIR. So, prayer is made that the petitioner be released on bail.

4. Present petition is resisted by the State counsel who submits that commercial quantity of contraband in the shape of 193 strips each containing 10 tablets of Tramadol Hydrochloride 100 mg SR having batch No.MNB/07/644, MB/07/645 manufacturing date as January, 2021 and expiry date as December, 2022 were recovered from the petitioner and co-accused, both of whom were traveling on a motorcycle. However, the State counsel has not disputed the fact that the petitioner is in custody for the last more than 1 year and 10 months and is having no criminal history. State counsel, while referring to order dated 5.6.2021 passed by Court of Sub Divisional Judicial Magistrate, Tohana under Section 52-A of NDPS Act, submits that the sample was separated and properly sealed in the presence of learned Magistrate and then sent for examination to FSL, Haryana and the said sample parcel reached the said laboratory with seals intact and on analysis, its contents were found to be that of Tramadol. State counsel further submits that the present case is relating to recovery of commercial

quantity of contraband and as such, rigors of Section 37 of NDPS Act are applicable to the present case. So, prayer is made that the present petition be dismissed.

5. I have considered the submissions made by the counsel for the parties.

6. As per FIR, 193 strips each containing 10 tablets of Tramadol Hydrochloride 100 mg SR having batch No.MNB/07/644, MB/07/645 manufacturing date as January, 2021 and expiry date as December, 2022 were recovered from possession of the petitioner and co-accused Sunil Kumar by the police. From the perusal of report of FSL, it appears that only 10 loose tablets stated to be that of Tramadol were sent for analysis to FSL. So, *prima facie*, it appears that none of the 193 strips each containing 10 tablets bearing batch number, manufacturing date and expiry date was sent to FSL for purpose of analysis. So, it is debatable issue as to whether sample sent for analysis is to be considered as representative sample of the entire medicines stated to be recovered from possession of the petitioner and his co-accused.

7. Admittedly, the petitioner is in custody for the last more than 1 year and 10 months and is having no criminal history. It will take considerable time for conclusion of trial. Thus, no useful purpose is going to be served by keeping the petitioner in custody for any further period.

8. In view of the above and the fact that trial is not proceeding ahead, there are sufficient mitigating circumstance for grant of regular bail to the petitioner even in the face of embargo provided under Section 37 of NDPS Act.

9. Accordingly, without commenting on the merits of the case, the present petition is allowed and the petitioner is ordered to be released on regular bail subject to his furnishing bail bonds/surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

(KARAMJIT SINGH)
JUDGE

May 1, 2023
Paritosh Kumar

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No