

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

CRM-M-44644-2022

Date of Decision: 20.04.2023

Ramesh Bijarnia @ Ramesh Kumar
Versus

..... Petitioner

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Parminder Singh Sekhon, Advocate, for the petitioner.
Mr. B.S. Virk, Deputy Advocate General, Haryana.

Rajesh Bhardwaj, J.

Prayer in the present petition is for the grant of regular bail to the petitioner in a case FIR No.41 dated 22.02.2021, registered under Section 22-C, 27-A of NDPS Act, at Police Station Sadar Fatehabad, District Fatehabad.

As per facts of the case, the Police party while on checking of narcotic substances conducted a barricading on NH-9 Sirsa-Fatehabad Road on 22.02.2021. They spotted two persons coming on motorcycle and they were stopped. On asking, the person driving the motorcycle disclosed his name as Suresh Kumar and the other riding pillion disclosed his name as Sandeep Kumar. The pillion rider, namely Sandeep Kumar was holding a black coloured polythene in his hands. On suspicion, they were given offer under Section 50 of NDPS Act for checking of the same. On their consent, Sub Divisional Officer was called and search was conducted in his presence. On checking of the bag, recovery of 45 strips (total 450 tablets) of Tramadol Hydrochloride 100 mg SR tablets, having weight 201.06 grams; and 123 strips (total 984 capsules) of Superdol-Plus Tramadol Hydrochloride, Paracetamol and Dicyclomine Hydrochloride Capsules

having weight 793.35 grams was effected. The accused failed to show any licence regarding possession of the intoxicant tablets recovered and thus, a case under Sections 22-C/61/85 of NDPS Act was registered and the investigation commenced. Both the accused were arrested on the spot and they disclosed about another accused, namely, Chunni Ram @ Sandeep from home they purchased these intoxicant tablets. Chunni Ram @ Sandeep was arrested on 12.03.2021 and he suffered disclosure statement that he purchased the recovered contraband from Ramesh Bijarnia i.e. the petitioner. Resultantly the petitioner was arrested on 18.05.2022. He approached the Court of learned Additional Sessions Judge, Fatehabad for grant of bail, who, after hearing the parties, declined the same vide order dated 27.07.2022. 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 and frivolously implicated in the present case. He has submitted that neither the petitioner was arrested on the spot nor recovery of the prohibited drugs, was effected from him. He submits that co-accused, namely, Sandeep Kumar and Suresh Kumar were arrested by the Police on the spot and from their custody the intoxicating tablets were recovered. He submits that during the investigation they made disclosure about co-accused Chunni Ram @ Sandeep, from whom both of them purchased the recovered contraband. He submits that it is on the disclosure statement of Chunni Ram @ Sandeep, stated that he purchased these contraband from the petitioner i.e. Ramesh Bijarnia and hence, the petitioner was arrested in this case. He submits that the disclosure statement made by the co-accused is not an admissible evidence and thus false

implication of the petitioner is writ large. He submits that the petitioner is behind bars since the date of his arrest and the investigation in this case is already complete and charges are also framed. He relies upon the judgment of this Court in Ramesh Kumar vs. State of Haryana, passed in CRM-M-34582-2022 dated 19.01.2023 and judgment of Rajasthan High Court in Ramesh Kumar vs. State of Rajasthan, passed in SB CrI. Misc Bail Application No.5903-2020 dated 06.07.2020, whereby the petitioner was granted bail in similar cases. He submits that in view of the abovesaid orders granting bail to the petitioner, he deserves to be granted bail in this case as well.

On the other hand, learned State counsel has vehemently opposed the submissions made by learned counsel for the petitioner. He has submitted that the accused, namely, Sandeep Kumar and Suresh Kumar were arrested on the spot and contraband recovered from them constitutes a commercial quantity. It is submitted that during the investigation, both the accused disclosed about co-accused Chunni Ram @ Sandeep from whom they purchased the recovered contraband. He submits that thereafter during the interrogation of Chunni Ram, it was revealed that he had purchased the contraband from the petitioner. He submits that the petitioner is a habitual offender and besides this case, he is facing prosecution in two more cases for the similar nature, out of which one is registered in Rajasthan. He submits that recovered contraband falls in the category of commercial quantity and statutory provisions of Section 37 of NDPS Act are straightway attracted in this case. He submits that though the petitioner has been granted bail in other two cases, however, the facts and circumstances of the same are distinguishable from the facts of the present case, as application of

Section 37 of NDPS Act, has not been considered in that case. He submits that both the judgments relied upon by the petitioners are not applicable in the present case. He has vehemently contented that the petitioner is the main supplier of the contraband recovered from the co-accused. He submits that during the investigation, the petitioner disclosed that he purchased the contraband from one unknown supplier for Rs.35,000/- and sold the same to co-accused Chunni Ram @ Sandeep for Rs.45,000/- and spent the profit earned by him. On instructions, he submits that in all there are 25 prosecution witnesses, out of which 3 witnesses have been examined as on date and hence, granting bail to the petitioner may hamper the trial of the case.

Heard.

After hearing learned counsel for the parties and perusing the record, it is apparent that the petitioner though was not arrested on the spot, however, his complicity has been surfaced during the investigation of the co-accused. It has been disclosed that commercial quantity, which was recovered from Sandeep Kumar and Suresh Kumar, was sold by the petitioner to another accused-Chunni Ram @ Sandeep, who disclosed about the petitioner having sold the same to him. Chunni Ram @ Sandeep further sold the same to Sandeep Kumar and Suresh Kumar. Evidently, the contraband recovered falls in the category of commercial quantity and thus, the provisions of Section 37 NDPS Act are attracted in the present case. Though the petitioner has relied upon the judgments granting him bail in other FIRs in which he is already facing prosecution, but this Court finds that same are distinguishable from the present case for the reason that the satisfaction to be drawn by the Court under Section 37(1)(b)(ii) of the

NDPS Act have not been discussed in those cases. As submitted before this Court, the petitioner is facing prosecution in two more cases of similar nature, thus this Court does not find any ground for its satisfaction under Section 37(1)(b)(ii) of the NDPS Act. Out of total 25 prosecution witnesses, 3 witnesses have been examined so far.

Resultantly, the present petition is hereby dismissed being devoid of any merit.

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

20.04.2023
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Whether Speaking/Reasoned
Whether Reportable

(RAJESH BHARDWAJ)
JUDGE

: Yes/No
: Yes/No