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

CRM-M-45688-2022 (O&M)
Date of Decision: 2nd August, 2023

Sandeep @ Dilli Wala

....Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Navkiran Singh, Advocate
for the petitioner.

Mr. Ram Kumar Singla, DAG, Haryana.

HARSH BUNGER, J.

Petitioner (Sandeep @ Dilli Wala) has filed the instant petition under Section 439 of the Code of Criminal Procedure seeking grant of regular bail in case FIR No.136, dated 08.06.2022, registered under Sections 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, at Police Station Rajound, District Kaithal.

2. Reply by way of affidavit of Sajjan Kumar, HPS, Deputy Superintendent of Police, Kalayat has been filed on behalf of respondent/State of Haryana, which is already on record.

3. Custody certificate dated 07.05.2023 of the petitioner has been filed by learned State counsel in the Court, which is already on record.

4. Briefly, the aforesaid case FIR has been registered on the basis of *ruqa* sent by ASI Manjit Singh, wherein it was stated that on 08.06.2022, he along with the other police officials reached at Haryana Punjab Dhaba Family Restaurant near Kithana side main Jind-Kaithal Road on official vehicle bearing No.HR-64-0088 (Mark Tavera) for checking and prevention of crime relating to Narcotic Substances, then at that time a person was seen coming on foot from the side of village Kithana, who signaled the police party to stop and the said person gave information that Mandeep s/o Suresh Kumar, who was having a chemist shop in village Pega sells intoxicant tablets to drug addicts and that now Mandeep is about to go from village Kithana towards Kaithal on his motorcycle bearing No.HR-83-A-6901 (Make Platina, color black) by carrying black backpack full of intoxicant tablets in order to sell the same to its buyers. He stated that in case barricades are laid then, Mandeep can be caught with intoxicant tablets. Finding the information reliable, a *ruqa* was prepared and the same was sent to the Police Station for registration of the FIR. Thereafter, the barricading was done in front of Haryana Punjab Dhaba Family Restaurant at Jind-Kaithal road. After sometime, one person on a motorcycle was seen coming from the side of village Kithana and the secret informer after identifying the said person from a distance of 100 meters left the spot and when the said motorcycle reached near the police party, he was signaled to stop, however, he tried to turn back but was apprehended by the police party. Upon inquiry, he disclosed his name as Mandeep @ Monu s/o Suresh Kumar and the registration number of his motorcycle was HR-83-A-6901. After following the procedure and making the apprehended person aware of his legal rights regarding search, Mandeep expressed his desire to be searched by a Gazetted Officer, accordingly, Rajbir Mahant-ETO, Kaithal was telephonically called

at the spot, who reached there at about 08:20 P.M. in his official vehicle and the entire circumstances were disclosed to Rajbir Mahant-ETO. Thereafter, the aforesaid ETO introduced himself to the apprehended person and he was made aware of his legal rights regarding search and during the search of backpack of the accused-Mandeep, it was found to contain five boxes of white colour containing tablets on which Tramadol Prolonged Release Tablets IP (100mg) Tramatrast SR 100 and 16 boxes of yellow colour containing tablets, on which Alprazolam Tablets IP 0.5 mg ALPRASAFE 0.5 mg, were written. Thereafter, ASI Manjeet Singh checked all the boxes of Tramadol Prolonged Release Tablets IP (100mg) and in all the five boxes total 2500 tablets i.e. 50 strips in each box and 10 tablets in one strip, were found. On all the boxes and strips batch No.PL07EW15 MFG.DATE 10/2021, expiry date 09.2023, MRP Rs.215.60 for 10 TABS, inclusive of all taxes, manufactured by Akums Drugs Pharmaceuticals Ltd., at Plot No.26A, 27-30 Sector-8A, IIE, Sidcul Ranipur, Haridwar, 249 403, Uttarakhand was written. Thereafter ASI Manjeet Singh checked by opening boxes of Alprazolam Tablets IP 0.5 mg Alprasaft 0.5 tablets, in which total 9600 tablets i.e. 60 strips and every strip of 10 tablets were found. On all the boxes and strips batch No.PCCAA911 MFG. Date 03/2022, expiry date 02.2025 MRP Rs.24.76 for 10 tablets, inclusive of all taxes manufactured by Pure Cure Healthcare Pvt. Ltd. (A subsidiary of Akums Drugs Pharmaceuticals Ltd.) Plot No.26A, 27-30 Sector-8A, IIE, Sidcul Ranipur, Haridwar, 249 403, Uttarakhand was written. When the accused was asked to produce any license or permit with regard to the said medicines he disclosed that he had no such permit or license. Thereafter, personal search of the accused along with motorcycle was conducted but the search did not lead to any further recovery. The aforesaid recovery of tablets/drugs was intimated

to Rajnish Dhaniwal, Drug Control Officer and on his asking, photographs of the drugs were sent to his mobile phone and he informed ASI Manjit Singh that the drugs were prohibited and illegal as per the Narcotic Drugs and Psychotropic Substances Act. Thereafter, parcel was prepared of the recovered drugs which came out to be 9600 tablets weighing 1 Kg. 152 grams, accordingly the case was registered and the accused was arrested.

5. As per the reply filed by the State of Haryana, on 09.06.2022, during interrogation, the aforesaid Mandeep suffered a disclosure statement, wherein he admitted the commission of the crime and further got arrested Sandeep @ Dilli Wala (petitioner) from village Kichhana. It is stated that during investigation, Sandeep @ Dilli Wala (petitioner) made a statement admitting his complicity in the offence.

6. The petitioner approached the Court of learned Special Judge (NDPS Act), Kaithal, seeking regular bail; however, the same was rejected vide order dated 16.09.2022 (Annexure P-6). Accordingly, the present petition has been filed by the petitioner before this Court under Section 439 Cr.P.C. seeking regular bail.

7. Learned counsel for the petitioner submits that the petitioner is a Kabaddi player, a social activist and also an agriculturist by profession and he has been falsely implicated in the present case due to his social activism regarding ban of liquor, etc. It is submitted that the petitioner is not named in the FIR and the petitioner was arrested on 09.06.2022 on the basis of confessional statement of co-accused Mandeep, which is not admissible in the evidence. Learned counsel further submits that no recovery has been effected from the petitioner and apart from the alleged confessional statement made by the co-accused, there is no other evidence available on the record to connect the petitioner with the alleged crime. Learned counsel

for the petitioner states that investigation in this case is complete qua the petitioner; challan has been presented; charges have been framed on 12.01.2023 and thus, the trial is likely to take long time and no useful purpose would be served by keeping the petitioner behind the bars. It is stated that the petitioner is not involved in any other case under the Narcotic Drugs and Psychotropic Substances Act. Learned counsel further submits that the petitioner herein is ready to abide by all the conditions as may be imposed by this Court or by the trial Court, accordingly prayer for grant of regular bail is made.

8. Per contra, learned State counsel opposes the plea of petitioner for grant of regular bail on the ground of seriousness and gravity of the offence. Learned State counsel submits that as per the Forensic Science Laboratory Report, the drugs recovered in the instant case falls in the category of commercial quantity, thus, the bar under Section 37 of the Narcotic Drugs and Psychotropic Substances Act is attracted. It is submitted that the petitioner does not have clean antecedents as he is involved in another case bearing FIR No.100 dated 13.07.2018, under Sections 370/506 of the Indian Penal Code and Section 4 of POCSO Act, at Police Station Rajound. Learned State counsel has referred to para 7 of reply filed by State, which reads as under:

“That the role of petitioner is that he had sold total 930 grams of Tramadol Prolonged Release Tablets IP (100mg) Tramatrast SR 100 tablets and 1 Kg. 152 grams of Alprazolam Tablets IP 0.5 mg ALPRASAFE 0.5 mg to main accused Mandeep @ Monu for total consideration of Rs.26,450/- and accused Mandeep was apprehended with 930 grams of Tramadol Prolonged Release Tablets IP (100mg) Tramatrast SR 100 tablets and 1 Kg. 152 grams of Alprazolam Tablets IP 0.5 mg ALPRASAFE 0.5 mg, which is commercial quantity.

Sandeep (Petitioner) is a drug-peddler. During investigation Rs.6500/- were found transferred by accused Mandeep in bank account No.50100479572736 which is in the name of wife of Sandeep (Petitioner) which shows his involvement in the crime. From which in pursuance of his disclosure statement he got recovered Rs.1200/- vide recovery memo 10.06.2022.”

Learned State counsel submits that since the allegations leveled against the petitioner are serious in nature, accordingly there is strong apprehension that if the petitioner is released on bail then he may tamper evidence by threatening or influencing the prosecution witnesses or may abscond and flee from justice which may delay the trial; accordingly, prayer for dismissal of the petition has been made.

9. Learned counsel for the petitioner, in rebuttal, has relied upon the judgment of Hon’ble Supreme Court in ***Maulana Mohd. Amir Rashadi v. State of U.P. and another, 2012(2) SCC 382*** to contend that the facts and circumstances of the present case are to be seen while deciding a bail application and the bail application of the petitioner cannot be rejected solely on the ground that the petitioner is involved in one other case. The relevant portion of the said judgment is reproduced herein below :-

“As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.”

10. I have heard learned counsel for the parties and perused the paper book, reply as well as the custody certificate of the petitioner filed by learned State counsel.

11. In this case, concededly the drugs were allegedly recovered

from co-accused Mandeep, who is stated to have suffered disclosure statement, wherein he had named the present petitioner also as an accused. As per the State's reply, role of the petitioner is stated that he had sold total 930 grams of Tramadol Prolonged Release Tablets IP (100mg), Tramatrast SR 100 tablets and 1 Kg 152 grams of Alprazolam Tablets IP 0.5 mg Alprasafe 0.5 mg to the main accused for a total consideration of Rs.26,450/- and during investigation Rs.6500/- were found to be transferred by accused Mandeep in the bank account of the wife of petitioner. Concededly, no recovery has been effected from the petitioner. The genuineness and veracity of the disclosure statement of the co-accused Mandeep and also the effect and connection of the petitioner with the allegedly recovered drugs on the basis of the amount of Rs.6,500/- stated to be transferred by main accused-Mandeep into the bank account of wife of the petitioner would be a debatable issue during the course of the trial. The petitioner was arrested on 09.06.2022 and has already undergone custody of 10 months 28 days (as on 07.05.2023). As per the custody certificate, there is no other case FIR under the Narcotic Drugs and Psychotropic Substances Act against the petitioner. It is not disputed by the learned State counsel that investigation in this case is complete, challan stands presented and even the charges have been framed, thus, the trial is likely to take long time.

12. So far as the apprehension expressed by learned State counsel that the witnesses could be influenced by petitioner, suffice it to state that in the event of any such conduct, the prosecution can always approach the competent court for cancellation of bail. Accordingly, it is observed that the State / Prosecuting Agency / State police shall be at liberty to observe the behaviour of the petitioner during bail period, and in case it feels that the petitioner is indulging in influencing any of the witnesses or tampering with

the prosecution evidence in any manner or otherwise causing interference with the progress of trial, it shall be open for the State / Prosecuting Agency / State police to move the trial Court for cancellation of bail, which shall be decided by the trial Court on merits.

13. In the facts of the present case and on an assessment of material on record, I am of the *prima facie* view at this stage that the petitioner may not have committed the alleged offence. Further, considering the fact that the petitioner is not involved in any other case under the Narcotic Drugs and Psychotropic Substances Act, there is nothing on record to suggest that he is likely to commit an offence under the Narcotic Drugs and Psychotropic Substances Act, while on bail.

14. In view of the above, the present petition under Section 439 Cr.P.C. seeking grant of regular bail to the petitioner (Sandeep @ Dilli Wala) in case FIR No.136, dated 08.06.2022, registered under Sections 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, at Police Station Rajound, District Kaithal; is allowed and the petitioner is ordered to be released on regular bail subject to his furnishing bail/surety bonds to the satisfaction of the Illaqa Magistrate/Duty Magistrate / trial Court concerned.

15. However, before release, the concerned Station House Officer be informed and the petitioner shall inform the concerned Station House Officer about his address at which he intends to reside during the pendency of the case and any change in the address shall be communicated to the concerned Station House Officer, forthwith. The petitioner would furnish his telephone number to the concerned Station House Officer and would keep his mobile location on. The petitioner would also furnish his telephone number to the concerned Station House Officer. Petitioner shall appear before the police station concerned on first Monday of every month till the

conclusion of trial in this case and every time inform in writing that he is not involved in any other crime other than the case(s) mentioned in the present order.

16. In addition, the petitioner (or anyone on his behalf) shall prepare an FDR in the sum of Rs.50,000/- and deposit the same with the trial Court. The same would be liable to be forfeited as per law, in case of absence of the petitioner from trial without sufficient cause.

17. Nothing expressed here-in-above shall be construed to be an observation on merits of the case and the facts and circumstances recorded above are only for consideration of the prayer for bail at this stage.

18. The petition is accordingly disposed of.

19. Pending application/s, if any, shall also stand disposed of.

(HARSH BUNGER)
JUDGE

2nd August, 2023
Himani

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