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

CRM-M-47162-2022 (O&M)
Date of Decision: 14th July, 2023

Harbans Singh @ Manga

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Satnam Singh Gill, Advocate
for the petitioner.

Mr. Harjinder S. Sidhu, AAG, Punjab.

HARSH BUNGER, J.

Petitioner (Harbans Singh @ Manga) has filed the instant petition under Section 439 of the Code of Criminal Procedure seeking grant of regular bail in case FIR No.93 dated 05.07.2020, registered under Sections 22, 25 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, at Police Station Samana, District Patiala.

2. Status report by way of affidavit of Mr. Saurav Jindal, PPS, Superintendent of Police, Sub-Division Samana, District Patiala has been filed on behalf of respondent/State of Punjab, which is already on record.

3. Custody certificate dated 16.05.2023 of the petitioner has been filed by learned State counsel in the Court, which was taken on record vide order dated 16.05.2023.

4. Succinctly, the aforesaid case FIR was registered on the basis of *ruqa* sent by ASI Sinder Singh, wherein it was stated on 05.07.2020, he along with the police party was present at Aggarsain Chowk, Samana in connection with search of bad and suspected elements and in the meantime at about 02:40 A.M., he received a secret information to the effect that Gurpreet Singh works as a driver on Canter No. PB-11-CU-5710 (make Tata) owned by Balwinder Singh son of Tarsem Singh @ Tunda. It was informed that the aforesaid Gurpreet Singh @ Bheem @ Kala @ Gandasi Maar will bring intoxicant tablets in the aforesaid canter and come near Aggarsain Chowk, Samana at minor drain, near nursery for selling and further supplying same to the customers and in case, he is monitored then he can be apprehended with huge quantity of intoxicant tablets. Finding the information reliable, *ruqa* was prepared and sent to the police station for registration of the case and with a request to send some competent Officer at the spot for investigation. Accordingly, the present FIR was registered.

5. As per the status report, upon receiving *ruqa* SI Jaspreet Singh along with police party reached at the spot and carried out necessary proceedings after barricading. Thereafter, the accused Gurpreet Singh was apprehended along with the above said Canter whereas, one person travelling on conductor seat managed to run away. Upon inquiring about the name and address of the other person who managed to run away, Gurpreet Singh disclosed his name as Tarsem Singh @ Tunda son of Gurdev Singh, who was accordingly nominated as an accused and offence under Section 29 of Narcotic Drugs and Psychotropic Substances Act was added. One

Balwinder Singh son of Tarsem Singh @ Tunda was also nominated as an accused on 05.07.2020. Upon search of the Canter, 49,500 intoxicant tablets make Tramadol Hydrochloride Tablets 100 mg. Clovidol 100 SR were recovered. It is further stated that during course of investigation, offence under Section 25 of Narcotic Drugs and Psychotropic Substances Act was added 07.07.2020.

6. As per the status report, during the course of investigation, accused Tarsem Singh @ Tunda was arrested on 25.08.2020 and during his interrogation, he revealed that the Canter is registered in the name of his son Balwinder Singh @ Shampy and his driver had brought intoxicant tablets from UP. Out of these tablets, half quantity was to be given by Balwinder Singh @ Shampy to his customers, while remaining tablets were to be sold by him to his permanent customers of village including Manga son of Baldev Singh @ Feela (petitioner), Rajwinder Singh s/o Manga, Surjit Kaur @ Seeto d/o Dalip @ Deepa, accordingly, the petitioner was nominated has an accused in the aforesaid case FIR. It is further stated in the status report that as per report received from Forensic Science Laboratory, Mohali, the tablets contained 99.8 mg/tablet of Tramadol Hydrochloride. The anticipatory bail filed by the petitioner was dismissed by the learned Sessions Judge, Patiala vide order dated 22.01.2021. It is mentioned that co-accused Balwinder Singh @ Shampy, Rajwinder Singh and Surjit Kaur @ Seeto joined the investigation as per the directions of the orders passed by this Court and the supplementary report under Section 173 (8) Cr.P.C. was also presented against them on 01.06.2021. It is also stated that the present petitioner was arrested in this case on 15.07.2022 while he was in custody in another case FIR No.42 of 2021 under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, registered at Police Station City

Samana.

7. Learned counsel for the petitioner submits that the petitioner is innocent and has been falsely implicated in the present case. It is submitted that the petitioner has neither been named in the secret information nor in the FIR and petitioner has been nominated as an accused on the basis of disclosure statement of co-accused which is not admissible in the eyes of law. It is further submitted that there is non-compliance of Section 42 of the Narcotic Drugs and Psychotropic Substances Act and no independent witness was joined by the police at the time of the alleged search and seizure. It is also submitted that no recovery has been effected from the petitioner and the petitioner has been in custody since 15.07.2022. It is next submitted that investigation in this case is complete; challan has been presented; charges have been framed and out of total 18 witnesses, 4 witnesses have been examined. Learned counsel submits that the petitioner is the chronic patient of T.B. and is not maintaining good health. It is also submitted that the co-accused of the petitioner namely Balwinder Singh has been granted the concession of anticipatory bail vide order dated 22.01.2021 (Annexure P-2) in CRM-M-26840-2020 passed by the Co-ordinate Bench of this Court and another co-accused namely Tarsem Singh @ Tunda has been granted the concession of regular bail vide order dated 15.03.2021 (Annexure P-3) in CRM-M-10768-2021 passed by the Co-ordinate Bench of this Court. It is stated that the petitioner had applied for grant of regular bail before the learned Judge, Special Court, Patiala which has wrongly been dismissed vide order dated 22.08.2022 (Annexure P-1). 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. It is submitted that as per the report of Forensic Science Laboratory, salt Tramadol Hydrochloride was found in the alleged recovered contraband and the same falls under the category of commercial quantity, thus, the bar of Section 37 of the Narcotic Drugs and Psychotropic Substances Act would be attracted. It is further submitted that as per the custody certificate, the petitioner is involved in one more case under the Narcotic Drugs and Psychotropic Substances Act. Learned State counsel submits that since the allegations levelled 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. I have heard learned counsel for the parties and perused the paper book, status report as well as the custody certificate of the petitioner filed by learned State counsel.

10. In this case, the petitioner has been nominated as an accused on the basis of disclosure statement of co-accused namely Tarsem Singh @ Tunda. The petitioner was arrested in this case on 15.07.2022, while he was already in custody in another case FIR No.42 of 2021, registered at Police Station City Samana. In the said case FIR No.42, the petitioner has already been granted the concession of regular bail vide order dated 08.09.2022 passed by the learned Judge, Special Court, Patiala. Moreover, the co-accused on whose disclosure statement the petitioner was nominated as an accused i.e. Tarsem Singh @ Tunda has already been granted bail by a Co-ordinate Bench of this Court vide order dated 15.03.2021 passed in

CRM-M-10768-2021. The petitioner was never arrested at the spot and the admissibility and veracity of the disclosure statement made by the co-accused Tarsem Singh @ Tunda would be a debatable issue during the trial; another co-accused Balwinder Singh has also been granted anticipatory bail vide order dated 21.01.2021 passed in CRM-M-2684-2020. As per the status report, the investigation in this case is complete, charges have been framed and the trial is going on and out of 18 witnesses, 4 witnesses have already been examined and 3 witnesses are stated to have been given up, thus, the trial is likely to take long time and no useful purpose would be served by keeping the petitioner behind the bars.

11. As regards, the involvement of petitioner in one more case is concerned, suffice it to say that the petitioner is already on bail in the said case and the registration of other cases against the petitioner cannot be taken to be as the sole material consideration for the purpose of declining him the relief of bail. In this regard, reference can be made to the judgment rendered by Hon'ble Supreme Court in case of ***"Maulana Mohammed Amir Rashadi Vs. State of Uttar Pradesh and another"***, reported as ***(2012) 2 Supreme Court Cases, 382***, wherein it was observed as under:-

"It is not in dispute and highlighted that the second respondent is a sitting Member of Parliament facing several criminal cases. It is also not in dispute that most of the cases ended in acquittal for want of proper witnesses or pending trial. 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."

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 view of the above, the present petition under Section 439 Cr.P.C. seeking grant of regular bail to the petitioner (Harbans Singh @ Manga) in case FIR No.93 dated 05.07.2020, registered under Sections 22, 25 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, at Police Station Samana, District Patiala; 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.

14. 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. 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.

15. 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.

16. 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.

17. The petition is accordingly disposed of.

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

(HARSH BUNGER)
JUDGE

14th July, 2023
Himani

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No