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

CRM-M-44645-2023(O&M)

Date of Decision:13.10.2023

**Akash Sidhu**

....Petitioner(s)

Versus

**State of Punjab**

.....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI**

Present: Mr. Aseem Kaushal, Advocate, for the petitioner.

Mr. Gurdarshan Singh Sidhu, AAG, Punjab.

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**JASGURPREET SINGH PURI, J. (Oral)**

1. The present petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in FIR No.0102 dated 07.06.2023, under Sections 22, 25/61/85 of NDPS Act, registered at Police Station City Jagroan, District Ludhiana Rural.

2. Learned counsel for the petitioner has submitted that the petitioner is in custody from 07.06.2023 and the allegations in the present case were pertaining to 210 grams of Tramadol from the petitioner and the other co-accused namely, Jaswinder Singh @ Soni. He further submitted that the investigation of the case has already been completed and the challan has been presented and the aforesaid confiscation of tablets does not fall in the category of commercial quantity and the trial of the case may take long time and therefore, the petitioner may be considered for the grant of regular bail.

3. On the other hand, Mr. Gurdarshan Singh Sidhu, AAG, Punjab has submitted that it is correct that the petitioner is in custody from

07.06.2023 and the confiscated quantity from the two accused including the petitioner is 210 grams of Tramadol and does not fall in the category of commercial quantity but he has opposed the grant of bail to the petitioner on the ground that the petitioner is involved in one more case under the NDPS Act.

4. I have heard the learned counsel for the parties.

5. The petitioner is in custody from 07.06.2023. Investigation of the case has been completed and thereafter challan has been presented.

6. On the last date of hearing, learned counsel for the petitioner had pointed out that the regular bail of the petitioner was dismissed by the learned Special Judge on 28.07.2023 by observing that on the basis of the report of the Chemical Examiner the recovery falls in the category of commercial quantity but thereafter when the bail application of the co-accused namely, Jaswinder Singh @ Soni was filed and he was granted bail on 28.08.2023 in which it was observed by the learned Special Judge that the quantity does not fall within the category of commercial quantity. Therefore, this Court called for the report in this regard pertaining to the material inconsistency between the two orders from the learned District & Sessions Judge, Ludhiana. A report has now been received in which it has been so reported by the learned Sessions Judge that when the bail application of the petitioner was dismissed at that point of time in fact the FSL report was not submitted and the challan was also not presented whereas in the order it has come that as per the Chemical Examiner report, recovery falls under the category of commercial quantity which was an inadvertent mistake for which an unconditional apology has been tendered by the concerned officer.

7. Be that as it may, this Court does not wish to go into the aforesaid

legality of the order passed by the learned Special Judge but would only consider the prayer of the present petitioner in the present case for considering the grant of regular bail. Admittedly, now the position is that the alleged recovered quantity from the two accused including the petitioner is 210 grams of Tramadol and the same does not fall in the category of commercial quantity since the same is fixed at 250 grams under the NDPS Act. Investigation of the case has already been completed and the bar contained under Section 37 of the NDPS Act will not apply in the present case. So far as the pendency of other case under the NDPS Act against the petitioner is concerned, the same cannot become a ground for denial of bail to the petitioner.

8. Consequently, the present petition is allowed. The petitioner shall be released on regular bail subject to furnishing bail bonds/surety to the satisfaction of the learned trial Court/Duty Magistrate concerned, if not required in any other.

9. However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant for the purpose of deciding the present petition only.

**13.10.2023**

*rakesh*

**(JASGURPREET SINGH PURI)**  
**JUDGE**

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|--------------------|---|--------|
| Whether speaking   | : | Yes/No |
| Whether reportable | : | Yes/No |