

...Petitioner(s)

Versus

State of Haryana

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Rahul Gautam, Advocate for the petitioner.
Mr. Rajiv Sidhu, DAG, Haryana.

AVNEESH JHINGAN, J (Oral):

1. The present petition has been filed under Section 439 of Cr.P.C. seeking regular bail in FIR mentioned below:-

FIR No.	Dated	Police Station	Sections
477	1 st October, 2021	City Tohana, District Fatehabad	22-C of Narcotic Drugs and Psychotropic Substances Act, 1985

2. Learned counsel for the petitioner claims parity with co-accused Rajesh Goyal who was granted regular bail by this court on 12th September, 2023 in CRM-M-17480-2023.

3. The following order was passed by this Court on 12th September, 2023:-

“1. The jurisdiction of this Court under Section 439 Cr.P.C., has been invoked for the grant of regular bail to the petitioner in FIR No. 477, dated 01.10.2021, under Section 22(c) of NDPS Act, 1985, registered at Police Station City Tohana, District Fatehabad (Annexure P-1).

2. Before advertng to the facts of the present case, it would be necessary to mention here that earlier petition bearing No.CRM-M-22937-2022 was withdrawn vide order dated 27.09.2022 (Annexure P-4) i.e., almost one year back.

3. Learned counsel for the petitioner submits that the petitioner has faced incarceration of 1 year, 11 months and 9 days, despite

having no role in the alleged offence to which the other co-accused namely Naveen Kumar was the main culprit. The facts involved in the instant petition can be recorded from the FIR in question, which reads as under:-

“To, the Station house Officer, Police Station City tohana, Jai Hind, today myself SI along with ESI Resham Singh No. 972, HC Dalbir Singh No. 192, HC Rajwinder No. 976 carrying personal laptop and printer on government car bearing registration no. HR22-R-7819 being driven by CT Rakesh Kumar No. 315 were present at T-point Narwana road Tohana in connection with barricading and checking of vehicles. At that time a car make Innova colour light gray bearing registration no. HR31-M-3535 coming from village Baliaala side and on coming near, myself ASI has given signal to the driver of car to stop the car then the driver of car has slower his car and tried to turn back the myself ASI has surrounded the car with the help of associate officials and apprehended him then seen a person also was sitting on the adjoining seat of driver in the said car and a white colour heavy plastic bag was lying on the backseat of car. Myself ASI has asked whereabouts from the driver of car then he disclosed his name as Rajesh Kumar son of Jiya Lal son of Lakshmi Narain, resident of Subhash Nagar, Rohtak road Jind and the person sitting on the adjoining seat of driver has stated his name as Naveen Kumar son of Rohtash son of Balwant resident of Kheri Masania, Police Station Uchana, District Jind. On having doubt of any intoxicating material in the white colour heavy bag (thaila) lying on the back seat of car, I have given notice under section 50 of NDPA Act to driver Rajesh Kumar that I, ASI Rohtash Kumar No. 50/FTB is posted in Crime Branch, Tohana and I am informing you Rajesh Kumar son of Jiya Lal of Lakshmi Narayan resident of Subhash Nagar, Rohtak Road Jind that I have doubt of any intoxicating material with you or in the white colour heavy plastic bag (Thaila) lying on the backseat of your car bearing registration No. HR31-M-3535, therefore search of your car and plastic bag (Thaila) is to be Conducted. If you want to get done the search of your car and white colour bag (Thaila) lying in your car through any Magistrate or Gazetted officer then he can be called on the spot for search or you can be taken before him for the said purpose. This is your legal right. The notice has been prepared as per rules and made him understand about its contents. Thereafter the notice under section 50 of NDPS Act has been given to Naveen Kumar above said that I, ASI Rohtash Kumar No. 50/FTB is posted in Crime Branch, Tohana and I am informing you Naveen Kumar son of Rohtash son of Balwant resident of Kheri Masania, Police Station Uchana, District Jind that I have doubt of any intoxicating material with you or in the white colour heavy plastic bag (Thaila) lying on the backseat of your car bearing registration No. HR31-M-3535, therefore search of your car and plastic bag (Thaila) is to be conducted. If you want to get done the search of your car and white colour

bag (Thaila) lying in your car through any Magistrate or Gazetted Officer then he can be called on the spot for search or you can be before him for the said purpose. This is your legal right. The notice has been prepared as per rules and made him understand about its contents. Thereafter Rajesh Kumar and Naveen Kumar above said have carefully read the notice under section 50 of NDPS Act and got recorded their reply to the notice under section 50 of NDPS Act, 1985 that we want to get done the search of our car and white colour bag (Thaila) lying in our car in the presence of any Magistrate, so he may be called to the spot. Rajesh Kumar and Naveen Kumar above said have appended their signature on the notice and reply to the notice and witnesses have also affixed their witness on the memo. Thereafter myself ASI has made phone call from my personal mobile phone No. 70568-69297 to Sh. Ramesh Kumar, Naib Tehsildar, Tohana on his mobile No. 94674-21000 and after informing him about the contents of car, requested him to come to the spot and after about hour, S Sh. Ramesh Kumar, Naib Tehsildar, Tohana reached to the spot on his private car, who given his identity to Naveen Kumar and Rajesh Kumar and directed myself ASI that conduct the search of above said Inova Car and the white colour (Thaila) lying in the car as per procedure. Myself ASI has made efforts to join any public witness in the police party but everybody shown their helplessness in this regard and gone from the spot. Thereafter myself ASI has conducted the search of white colour plastic bag (Thaila) lying on the backseat of car and checked the said plastic Thaila by opening its mouth then Tramadol Hydrochloride 100 mg SR tablets Radol- 100 are recovered. After taking out the said intoxicating tablets from the bag, the same have been counted then strip contains total 761 strips each 10/10 tablets, total intoxicating tables are recovered. The duly recovered intoxicating tablets have been checked then Batch No. 2371120, MFG 06/2021 and Exp. 11/2022 is written on the said strips. After putting the said intoxicating tablets in the same plastic Thaila and tying its mouth, the same has been weighted on computerized weighing machine then its weight is found to be Kg 950 grams along with plastic Thaila. After turning the plastic bag containing intoxicating tablets into parcel, Sh. Ramesh Kumar, Naib Tehsildar, Tohana has sealed the parcel with his seal bearing impression MS/1 and also prepared the sample of seal and after using seal, he has kept the same with him. thereafter myself ASI has sealed the plastic Thaila with my seal bearing impression Rk/3 and also prepared the sample of seal, after using seal, the same is handed over to HC Dalbir Singh No. 192. Sh. Ramesh Kumar, Naib Tehsildar, Tohana has attested the said duly sealed parcel of intoxicating tablets. Thereafter the search of car has been conducted then RC of car is found from the dashboard of car. Myself ASI has taken the duly sealed, parcel containing

Tramadol Intoxicating tablets, sample of seal, Innova Car bearing registration No. HR31-M-3535 along with original RC into police possession through seizure memo. The accused Rajesh Kumar and Naveen Kumar along with witnesses have put their signature on the memo. The accused Naveen Kumar and Rajesh Kumar above said have committed offence under section 22/61/85 of NDPS Act by keeping 7610 intoxicating tablets of Tramadol Hydrochloride 100 mg SR Tablets Radol -100 weighing 3 KG 950 grams along with plastic bag (Thaila). Therefore after preparing Ruqa on the personal laptop, the same is being sent to the Police Station by the hand of EHC Rajwinder No. 976 for registration of case. After register case, number of the same be intimated and competent investigating officer be sent to the spot for further investigation and special reports o the case be sent to Ilaqa magistrate and senic officer through special messenger. Myself AS along with associate official, accused person and case property is present on the spo Place- T-Point, Narwana Road, Tohana, Sd Rohtash Kumar ASI, Crime Branch, Tohana dat 01.10.2021 time 06.00 PM.”

4. *Learned counsel for the petitioner has also argued that the petitioner has given merely a lift to Naveen Kumar, who lives in the vicinity of the petitioner in the same area to travel to his brother in law, who is running a medical store in the name of Ajay Medical Hall, Jind and was not actually aware as to what is being carried by Naveen Kumar in the bag. He has further submitted that he came to know about the contraband being carried only at the time when the recovery was effected by the police after intercepting his car, which was owned by the petitioner and also being driven by him only.*

5. *Learned State counsel has filed the custody certificate of the petitioner, which is taken on record. According to the custody certificate, the petitioner is behind the bars for the last 1 year, 11 months and 9 days. He prays for dismissal of the instant petition urging that the recovery effected from his car is heavy and both have given a disclosure statement against each other with heavy recovery, which cannot be by any stretch of imagination be termed to be planted against the petitioner.*

6. *Be that as it may, Mr. Mann has failed to connect the petitioner by any other incriminating material with the contraband and also is in consonance with the fact that the petitioner was driving the car. He also does not controvert the fact that brother-in-law of the co-accused is running a medical store to which, the petitioner was going alongwith co-accused namely Naveen Kumar for handing over that bag.*

7. *Considering the custody period suffered by the petitioner i.e., 1 year, 11 months and 9 days as well as fact that out of total 16 witnesses, none has been examined and a very fair stand taken by Mr. Mann to say that though the*

car belonged to the petitioner and he was driving the same, but has only given the lift to Naveen Kumar, who was going to his brother-in-law at Jind. The story of the prosecution to rope in the petitioner is full of loopholes and creates doubt at least qua the role of the petitioner in the alleged offence added with the fact that trial is likely to take long time.

8. In view of the aforesaid discussions made hereinabove, the petitioner is directed to be released on regular bail on his furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

9. The present petition is allowed in the afore-said terms.

10. However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

4. Learned counsel for the State though opposes the prayer for grant of bail but on instructions fairly submits that challan has been presented. He is not in a position to distinguish the case of the petitioner qua the co-accused so far as grant of bail is concerned.

5. Without commenting on the merits of the case, on the basis of parity of petitioner vis-a-vis co-accused so far as grant of bail is concerned and though the investigation is complete conclusion of trial is likely to take time, the petitioner is granted bail subject to his furnishing bail bonds to the satisfaction of the Chief Judicial Magistrate/ Duty Magistrate concerned.

6. The petition is allowed.

7. Since the main case has been allowed, pending application if any is rendered infructuous.

[AVNEESH JHINGAN]
JUDGE

14th September, 2023

Parveen Sharma

1. Whether speaking/ reasoned	:	Yes / No
2. Whether reportable	:	Yes / No