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

CRM-M-47185-2022(O&M)

Date of Decision: 17.04.2023

ROHIT KUMAR @ LOVE

....Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. A.S. Manaise, Advocate
for the petitioner.

Mr. Harjinder S. Sidhu, AAG, Punjab.

HARSH BUNGER, J. (Oral)

The instant petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No.79 dated 26.08.2022 registered under Sections 21(b) & 22(c) of Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Kalanaur, District Gurdaspur (Annexure-1).

The brief facts of the case are that on 26.08.2022, the police party was patrolling at T-point Rudiana turn when informer gave a secret information that petitioner along with co-accused Vishal were coming on their Alto car from Dera Baba Nanak side and were having some intoxicating substance. On the basis of aforesaid secret information, the police party allegedly laid a barricade and started checking the vehicles. After sometime, one Alto car was seen coming, which was indicated to stop, but the car occupants got perplexed and tried to turn back the car. However, the Police party apprehended them on suspicion and inquired their

names/addresses. The car driver disclosed his name as Rohit Kumar @ Love (petitioner) while the co-driver disclosed his name as Vishal. On search, 5 grams of heroin was recovered in a transparent polythene bag from the pocket of petitioner's shirt. Similarly 5 grams of heroin was recovered in a polythene bag from the right pocket of the pant of co-accused Vishal. On search of the car, 1040 unlabelled loose intoxicating tablets weighing 138 grams were recovered in a polythene bag from the dashboard of the car. On this basis, FIR was registered and the accused were arrested.

Learned counsel for the petitioner submits that the petitioner is innocent and has been falsely implicated in the present case. It is submitted that mandatory provisions of Section 50, Section 42 of Narcotic Drugs and Psychotropic Substances Act was not made and no independent witness was joined at the time of alleged recovery, which makes the recovery doubtful. It is submitted that petitioner is not the owner of the car and thus the intoxicating tablets lying in the dashboard of the car cannot be said to be in conscious possession of the petitioner. It is further submitted that challan has been presented in this case but charges have not been framed. Learned counsel also submitted that the petitioner is not involved in any other case and he is in custody since 26.08.2022 and the trial is likely to take long time and no useful purpose would be served by keeping him behind the bars any further. It is submitted that as per Forensic Science Laboratory report, the salt phenobarbital was found in tablets weighing 138 grams, which does not fall in the category of commercial quantity, thus, bar under Section 37 of Narcotic Drugs and Psychotropic Substances Act is not attracted. It is also stated that co-accused Vishal has been granted bail (Annexure P-2). It is next submitted that the petitioner had applied for grant of regular bail before the

Judge, Special Court, Gurdaspur which has wrongly been dismissed vide order dated 22.09.2022. 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.

Learned State counsel opposes the plea of petitioner for grant of regular bail on the ground of seriousness of the offence. However, he does not dispute the fact that the challan in the present case has been presented and the recovered contraband is non-commercial. It is also not disputed that the present petitioner is not involved in any other case.

I have heard learned counsel for the parties and perused the paper book.

In this case petitioner is a young boy of around 22 years of age and he is in custody since 26.08.2022. The investigation is complete and challan has been presented in this case. The recovered contraband is non-commercial and rigors of Section 37 of Narcotic Drugs and Psychotropic Substances Act are not attracted. The co-accused (Vishal) has already been granted regular bail vide order dated 03.03.2023 (Annexure P-2). The trial is likely to take long time and no useful purpose would be served by keeping the petitioner behind bars.

Keeping in view the aforementioned circumstances, the instant petition 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 trial Court/Illaq Magistrate/Duty Magistrate concerned. However, the concerned Station House Officer shall be informed about the release of petitioner and the petitioner shall inform the concerned Station House Officer about his

address at which he intends to reside during the pendency of case and any change in the address shall also be communicated to the concerned Station House Officer, forthwith. The petitioner would also furnish his telephone number to the concerned Station House Officer. He shall appear before the police station concerned on the first Monday of every month till the conclusion of the trial.

In addition, the petitioner (or any one on his behalf) shall prepare a 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 the absence of the petitioner from trial without sufficient cause.

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.

The petition is accordingly disposed of.

17.04.2023

Amandeep

**(HARSH BUNGER)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No