

210

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

**CRM-M-46343-2023
Date of Decision: 14.11.2023**

Buta Singh

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Karandeep Singh Sidhu, Advocate
for the petitioner.

Mr. Vipin Pal Yadav, Addl. A.G., Punjab.

HARSH BUNGER J.

1. This is a second petition filed under Section 439 of the Code of Criminal Procedure on behalf of petitioner (Buta Singh) for grant of regular bail in case bearing FIR No.62 dated 29.09.2022, under Sections 22, 25 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred as 'the N.D.P.S. Act'), registered at Police Station Rureke Kalan, District Barnala.

2. In pursuance to an advance notice served upon the State of Punjab, status report by way of affidavit dated 12.10.2023 of Mr. Manavjit

Singh Sidhu, P.P.S., Deputy Superintendent of Police, Sub Division Tapa,

District Barnala has been filed on behalf of State of Punjab, which is already on record.

3. Custody certificate dated 12.11.2023 of the petitioner is filed by learned State counsel in Court today, which is taken on record, subject to all just exceptions.

4. Briefly, the aforesaid case FIR was registered on the basis of a *ruqa* prepared by Sub Inspector Satnam Singh, who stated that on 29.09.2022, he along with his fellow employees departed on a government car (Bolero) bearing registration No. PB-13-BA-1840 towards Village Rureke Kalan, Pakho Kalan etc., carrying along a laptop and printer, for the purpose of patrolling and checking of suspected persons. When the police party reached at link road Tajoke Road Bridge Canal, which falls in the jurisdiction of Village Rureke Kalan, then at around 07:05 P.M., one white Active Scooter bearing registration No. PB-03-BA-9197 was seen coming from the front side, upon which two hair cut youth were sitting, who became nervous upon seeing the police vehicle and tried to turn back, however, they were apprehended by the police party. Thereafter upon enquiry, the driver of Activa Scooter disclosed his name as Kulwant Singh s/o Mohinder Singh r/o Sandli Patti Mehraj, District Bathinda and the pillion rider disclosed his name as Buta Singh (petitioner) s/o Baggar Singh r/o Buttar Patti Phul, District Bathinda.

5. After following the due procedure, the search of Activa Scooter was carried out, from the *diggy* of which, one R.C. bearing No. PB-03-BA-9197, in the name of one Karamjit Kaur wife of Roshan Singh resident of Bhaini Mehra, District Bathinda, and one plastic envelope containing 190 strips of intoxicant tablets of Tramadol *Hydrochloride 100*

Clobedol-100 SR having batch No.ALT 2009, MD 04/2022, MRP Rs.192.50 ED 03/2025 (each strip containing 10 tablets) were recovered. The recovered tablets were converted into parcel and sealed and they were taken into police possession.

6. As per the status report, the samples prepared from the recovered intoxicant material were sent to the Forensic Science Laboratory, whereupon the report was received, wherein it was opined that the contents of sample of the said tablets were found to be '*Tramadol Hydrochloride*' and the average weight of each tablet came to be 373.53 mg., thus the total weight of 1900 tablets would come to 709.7 gms.

7. Learned counsel for the petitioner submits that the petitioner is innocent and he has been falsely implicated in the instant case. It is submitted that the petitioner is a resident of Village Phool and is a carpenter by profession whereas co-accused Kulwant Singh is a resident of Village Mehraj. It is further submitted that the petitioner had gone to Gurudwara Chota Gurusar, Village Mehraj, where he met co-accused Kulwant Singh, and being familiar with the people of nearby villages due to his profession, the petitioner requested co-accused Kulwant Singh to drop him. It is stated that on the way towards petitioner's village, the police officials had laid barricades and had stopped them and implicated in the aforesaid FIR. It is submitted that even as per the prosecution story, the alleged recovery of contraband was effected from the *diggy* of Aactiva Scooter bearing registration No.PB-03-BA-9197, which was being driven by co-accused Kulwant Singh, although the said Scooter was in the name of one Karamjeet Kaur wife of Roshan Singh resident of Bheni Mehraj. It is stated that the petitioner has no concern with the alleged crime and it has also come on

record that co-accused Kulwant Singh had borrowed the Aactiva Scooter for two days on 28.09.2022 from husband of aforesaid Karamjeet Kaur on the pretext of going to his relatives place. Learned counsel for the petitioner contends that in fact the main accused in the instant case is Kulwant Singh and during investigation, he had disclosed the name of one Kala Singh, accordingly, offence under Section 29 of the N.D.P.S. Act was added in the FIR in question.

8. Learned counsel for the petitioner submits that the learned Judge, Special Court, Barnala has wrongly dismissed the application for regular bail filed on behalf of the petitioner, vide order dated 09.11.2022 (Annexure P-2). Learned counsel further submits that the petitioner is not involved in any other case and he has undergone actual custody in the instant case for a period of one year, one month and twelve days (as on 12.11.2023); investigation in the case is complete and challan stands presented on 28.02.2023 and charges have been framed on 13.03.2023; trial in the case is likely to take some time to conclude and no useful purpose would be served by keeping the petitioner behind bars for indefinite period. Learned counsel for the petitioner submits that the petitioner is ready to abide by all the conditions as may be imposed by this Court or by the trial Court. Learned counsel further submits that the petitioner is also willing to furnish security in the form of Fixed Deposit Receipt (F.D.R.) before the concerned Court, so as to ensure his presence before the Court on each and every date of hearing. Accordingly, prayer for grant of regular bail is made.

9. Per contra, learned State counsel opposes the prayer of petitioner for grant of regular bail on the ground of seriousness and gravity of the offence. It is submitted that the intoxicant material recovered in the

instant case falls under the category of 'commercial quantity' and thus, rigors of Section 37 of the N.D.P.S. Act are attracted in this case. Learned State counsel submits that in case the petitioner is released on bail then he might influence the witnesses and also abscond and delay the trial. Accordingly, prayer for dismissal of the present petition has been made.

10. However, learned State counsel while referring to the custody certificate has submitted that there is no other case pending against the petitioner and he has undergone actual custody in this case for a period of one year, one month and twelve days (as on 12.11.2023). It is also conceded by learned State counsel that investigation in the case is complete, challan stands presented and charges have also been framed.

11. I have heard learned counsel for the parties and perused the paper book as well as the status report and custody certificate of the petitioner.

12. Since the petitioner seeks grant of bail mainly on account of long custody, no criminal antecedents and trial not likely to conclude in near future, accordingly gainful reference can be made to judgments rendered by Hon'ble Supreme Court in “Chitta Biswas @ Subhas v. State of West Bengal” (Criminal Appeal No. 245 of 2020 dated 07.02.2020), “Nitish Adhikary @ Bapan v. State of West Bengal” (Special Leave(Crl.) No. 5769 of 2022), “Shariful Islam @ Sarif v. State of West Bengal” (Special Leave to Appeal (Crl) 4173 of 2022 dated 04.08.2022), “Karnail Singh v. State of Odisha” (Criminal Appeal No. 2027 of 2022 dated 22.11.2022), “Karim Adaldar v. State of West Bengal” (Special Leave to Appeal (Crl.) No. 8653 of 2022), “Dheeraj Kumar Shukla Vs. State of Uttar Pradesh” (SLP No.6690 of 2022 dated 25.01.2023) and “Hasanujjaman and others Vs.

The State of West Bengal” (Special Leave Appeal (Crl.) No(s).3221 of 2023 dated 04.05.2023).

13. Concededly, the alleged recovery in this case falls under the category of 'commercial quantity' and bar of Section 37 of the N.D.P.S. Act is attracted, however, while dealing with Section 37 *ibid*, the Court is not called upon to record a finding of “not guilty” and it is only required to say that there are reasonable grounds to believe that the accused is not guilty of the offence.

14. In the peculiar facts and circumstances of the present case and on an assessment of material on record especially, the fact that the recovery of intoxicating material was made from the *diggy* of Aactiva scooter driven by co-accused Kulwant Singh and petitioner's stand that he is a carpenter by profession and he had only taken a lift from co-accused Kulwant Singh to go to his village and also the fact that petitioner is not involved in any other case, more so under the N.D.P.S. Act, I am of the *prima facie* view at this stage that the petitioner may not have committed the alleged offence and he is unlikely to commit an offence under the N.D.P.S. Act, while on bail.

15. Furthermore, the petitioner is in custody for a period of one year, one month and twelve days (as on 12.11.2023). Investigation in the case is complete, challan stands presented on 28.02.2023 and even charges have been framed on 13.03.2023. The petitioner does not have any criminal antecedents and trial in the case is likely to take some time to conclude.

16. So far as the apprehension expressed by learned State counsel that the witnesses could be influenced by the 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 the 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 to the trial Court for cancellation of the bail, which shall be decided by the trial Court on merits.

17. In view of the above discussion, present 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/trial and any change in the address shall be communicated to the concerned Station House Officer, forthwith. The petitioner would also furnish his telephone number to the concerned Station House Officer. He would also furnish his undertaking to the effect that he will not indulge in any illegal activity. The petitioner shall also appear before the concerned Police Station/Station House Officer on every alternate Monday till the conclusion of trial.

18. In addition, the petitioner (or anyone on his behalf) shall prepare a Fixed Deposit Receipt (F.D.R.) in the sum of Rs.1,00,000/- and submit the same with the trial Court. The same would be liable to be forfeited as per law, in case the petitioner remains absent from trial without any sufficient cause.

19. Nothing expressed hereinabove 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.

20. The petition is accordingly disposed of.
21. All pending application(s), if any, shall also stand closed.

14.11.2023
Apurva

(HARSH BUNGER)
JUDGE

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