

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CRM-M-54608-2022

Date of Decision: 28.3.2023

Sunil Kumar

....Petitioner

VERSUS

State of Punjab

....Respondent

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Yashpal Thakur, Advocate
for the petitioner.

Mr. Hakam Singh, AAG, Punjab.

KARAMJIT SINGH, J.

Prayer in the present petition under Section 439 of Code of Criminal Procedure is for grant of regular bail to the petitioner in case FIR No.53 dated 12.8.2022 registered for the offences punishable under Sections 22 of NDPS Act at Police Station Bakshiwalla, District Patiala.

As per the allegations appearing on the record, the police apprehended the petitioner on 12.8.2022 and recovered 250 grams of intoxicating powder containing Tramadol Hydrochloride from him.

Counsel for the petitioner *inter alia* contends that the petitioner has been falsely implicated in the present case and there are allegations that 250 grams of powder containing Tramadol Hydrochloride was recovered from his possession on 12.8.2022. He further submits that as per the provisions of Section 2(via) of the NDPS Act, the quantity to fall within the ambit of 'commercial quantity' must be greater than the quantity specified by

Central Government by notification in the official gazette; that notification

specifying 'small quantity' and 'commercial quantity' shows 250 grams of Tramadol Hydrochloride under 'commercial' head and in light of definition of 'commercial quantity', to fall under the same, it should be more than 250 grams. He further submits that the alleged recovery of contraband from the petitioner falls under non-commercial quantity. He further submits that the petitioner, who is having no criminal history under the NDPS Act, is in custody for the last more than 7 months and it will take considerable time for the trial to conclude. So, prayer is made that the petitioner be released on regular bail.

The present petition is contested by the State counsel who submits that the contraband recovered from the possession of the petitioner comes under commercial quantity and that the trial is going on and the prosecution has already examined 3 witnesses out of total 13 witnesses on behalf of the prosecution. So, prayer is made that the present petition be dismissed.

I have considered the submissions made by the counsel for the parties.

As per the case of the prosecution, the petitioner was found in possession of 250 grams of powder containing Tramadol Hydrochloride. As per the provisions of Section 2(viia) of the NDPS Act, the said contraband is covered under non-commercial quantity and as such, rigors of Section 37 of NDPS Act are not attracted to the instant case. Further, the petitioner is not facing any other criminal case under NDPS Act. Besides, the trial is at its initial stage as till date out of total 13 witnesses, the prosecution has been able to examine only 3 witnesses and the petitioner is in custody for the last more than 7 months. It will take considerable time for conclusion of trial.

So, further detention of the petitioner in the present case is not likely to serve any purpose.

In view of the above, without commenting on the merits of the case, the present petition is allowed and the petitioner is ordered to be released on regular bail subject to his furnishing bail bonds/surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

(KARAMJIT SINGH)
JUDGE

March 28, 2023
Paritosh Kumar

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No