

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

210

CRM-M-58470-2022

Date of decision: 05.09.2023

Krishna @ Krishna Devi

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Ajay Pal Singh Rehan, Advocate
for the petitioner.

Mr. I.P.S. Sabharwal, DAG, Punjab.

MANJARI NEHRU KAUL, J. (ORAL)

1. The petitioner is seeking the concession of bail under Section 439 of the Cr.P.C. in case FIR No.17 dated 06.02.2020 under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act') registered at Police Station Tanda, District Hoshiarpur.

2. Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the case in hand for having been found in possession of 1800 loose capsules of Tramadol. He submits that only 40 capsules out of the 1800 capsules were sent to the Forensic Science Laboratory, SAS Nagar, Mohali (for short, 'FSL'). Thus, the FSL report which has been annexed as Annexure P-1, was only limited to the 40 capsules that it contained Tramadol Hydrochloride. Qua the remaining recovery there was no FSL report. Hence, the alleged recovery sent to the FSL came to 3392 mg approximately which would not fall under the commercial quantity; since the entire recovered contraband had not been sent to the FSL,

there was a big question mark as to whether the remaining capsules contained Tramadol Hydrochloride or not. In support, learned counsel has drawn the attention of this Court to ***CRM-M-21359-2021 titled as 'Malkiat Singh Vs. State of Punjab' decided on 28.06.2021***, wherein in similar circumstances, a Coordinate Bench of this Court had extended the concession of bail to the accused by observing as follows:-

“7. The position as noted above has not been controverted by learned State Counsel, who confirms that the number of loose tablets sent for chemical examination was only 10 and that tramadol hydrochloride salt detected in the aforementioned 10 tablets was 913.6 mg. Learned State Counsel has not been able to distinguish the judgment of Hon’ble the Division Bench in Dharam Singh’s case (supra), on the point that in case only a small sample from amongst the loose tablets is sent for chemical examination, it is not possible to presume that the remaining loose tablets also contain the same salt.”

3. Learned counsel further submits that the petitioner be extended the concession of bail as she has now been in custody since 06.02.2020 and only 03 prosecution witnesses out of the 11 witnesses stand examined till date.

4. Per contra, learned State counsel while opposing the prayer and submissions made by the counsel opposite on instructions, submits that the petitioner had been apprehended on spot and a recovery of 1800 intoxicant capsules had been effected from her. Learned State counsel submits that samples of 40 capsules had been drawn as per the provisions of the NDPS Act and sent to FSL which were found to be containing Tramadol Hydrochloride and thus the petitioner prima facie was found to be in possession of narcotics. Learned State counsel has further submitted that the petitioner cannot derive benefit out of

Malkiat Singh's case (supra) in view of the fact that the petitioner therein did not have any criminal antecedents whereas in the instant case the petitioner is a habitual offender and is involved in a number of other criminal cases including 06 cases under the NDPS Act.

5. I have heard learned counsel for the parties and perused the material placed on record.

6. This Court does not find any merit in the submissions made by the counsel for the petitioner that since only 40 capsules had been sent to the chemical examiner there was no definite opinion qua the remaining contraband effected as to whether the remaining capsules also contained Tramadol Hydrochloride.

7. Furthermore, this Court cannot ignore that the petitioner is also involved in as many as 06 more cases under the NDPS Act. Hence, prima facie, the petitioner comes across as habitual offender for which he does not deserve the concession of bail.

8. Accordingly, the instant petition is dismissed. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

05.09.2023

(MANJARI NEHRU KAUL)

Vinay

JUDGE

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