



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

**CRM-M-5054 of 2024
Date of Decision: 27.05.2024**

Tarsem Singh @ Sema ...Petitioner
vs.
State of Punjab ...Respondent

Coram : Hon'ble Mr. Justice N.S.Shekhawat

**Present : Mr. A.S.Barnala, Advocate
for the petitioner.**

Mr.M.S.Bajwa, Deputy Advocate General, Punjab.

N.S.Shekhawat J. (Oral)

1. The petitioner has filed the second bail petition under Section 439 Cr.P.C. with a prayer to grant regular bail to him in case FIR No.47 dated 13.03.2023 registered under Sections 22, 29 of NDPS Act, 1985, at Police Station Dhanaula, District Barnala. The earlier bail petition filed by the petitioner was withdrawn by him on 02.11.2023. Since there has not been substantial progress in the trial, the petitioner has filed the second petition for the same relief on the ground that he has already completed more than one year and two months of actual custody in the present case.

2. As per case of the prosecution, the petitioner was apprehended by the police on 13.03.2023, while he was carrying a transparent polythene bag containing loose 700 intoxicating tablets, without any permit or licence. During investigation, the FSL report was received and as per the report "Tramadol Hydrochloride" was found in the contents of the tablets. The average weight of



each tablet was found to be 351.34 mg and thus, the total weight of tablets comes out to be 245.93 grams.

3. Learned counsel for the petitioner contends that in fact, no recovery was effected from the present petitioner and the tablets were wrongly planted on him in the present case by the police. He is continuing in custody since 16.03.2023. He further contends that as per the admitted case of the prosecution, the total quantity of contraband, which was allegedly recovered from the present petitioner, is 245.93 grams, which is non-commercial in nature. Learned counsel further contends that even though, two more FIRs were ordered to be registered against the present petitioner under the provisions of NDPS Act, but the petitioner is already on bail in the said cases.

4. On the other hand, learned State counsel has vehemently opposed the submissions made by learned counsel for the petitioner on the ground that the petitioner is a habitual offender. However, learned State counsel could not dispute the fact that the quantity of contraband, which was recovered from the present petitioner, is non-commercial in nature and the rigors of Section 37 of the NDPS Act would not apply to the facts of the present case.

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

6. The petitioner was apprehended on 13.03.2023, while he was carrying 700 intoxicant tablets in his conscious possession and as per FSL report, the recovery of contraband from the present petitioner has been declared to be “non-commercial” in nature. Apart from this case, the petitioner was facing prosecution in two more cases under the provisions of NDPS Act, but the



petitioner is on bail in the said two cases. The Hon'ble Supreme Court in the matter of “***Prabhakar Tewari Vs. State of U.P., and another***” 2020(1) R.C.R. (Criminal) 831 has held that the pendency of several criminal cases against the accused cannot be the basis to refuse the prayer of bail. Similar observations have been made by the Hon'ble Supreme Court in the matter of “***Maulana Mohd. Amir Rashadi Vs. State of U.P., and another***” 2012(1) R.C.R. (Criminal) 586.

7. Without commenting on the merits of the case, the present petition is allowed and the petitioner is ordered to be released on bail subject to his furnishing bail bonds/surety bonds to the satisfaction of the trial Court/Duty Magistrate/Chief Judicial Magistrate, concerned, subject to the following conditions:-

- (i) The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade him to disclose such facts to the Court or to any other authority.
- (ii) The petitioner shall remain present before the Court on the dates fixed for hearing of the case.
- (iii) The petitioner shall not absent himself from the Court proceedings except on the prior permission of the Court concerned.
- (iv) The petitioner shall surrender his passport, if any, (if already not surrendered), and in case he is not holder of the same, he shall swear an affidavit to that effect.
- (v) The petitioner shall also file his affidavit before the concerned Court, mentioning his ordinary place of residence and number of mobile phone, which shall be used by him during the pendency of the trial. In case of change of place of residence/mobile number, he shall share the details with the concerned Court/learned Trial Court.

- (vi) In case, the petitioner involves in any other criminal activity, during the pendency of the trial, it shall be viewed seriously.
- (vii) The concerned Court may insist on two heavy local sureties and may also impose any other condition, in accordance with law, while accepting the bails bonds and surety bonds of the petitioner.
- (viii) The petitioner shall report every 1st Monday in English calander month to the concerned SHO till the conclusion of the trial and SHO shall mark his presence by making an entry in the rojnamcha. In case, he does not report on every 1st Monday to the concerned SHO, it shall be viewed seriously and the concession granted to him shall be liable to be cancelled and the State of Punjab shall be at liberty to move an appropriate application in this regard.

27.05.2024.
hemlata

(N.S.SHEKHAWAT)
JUDGE

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