

201

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision: 09.07.2024

(I) CRM-M-12345-2024

PADAM KUMAR ALIAS MONU

...Petitioner

VERSUS

STATE OF PUNJAB

...Respondent

(II) CRM-M-10150-2024

HARWINDER SINGH

...Petitioner

VERSUS

STATE OF PUNJAB

...Respondent

(III) CRM-M-8248-2024

VICKY SINGH

...Petitioner

VERSUS

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

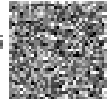
Present:- Mr. P. S. Ahluwalia, Advocate,
Mr. Jaiveer Singh, Advocate and
Mr. Gaurav Goyal, Advocate
for the petitioner in CRM-M-12345-2024.

Mr. L. S. Sekhon, Advocate for the petitioner(s) in
CRM-M-10150-2024 and CRM-M-8248-2024.

Mr. Adeshwar Singh Pannu, AAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

1. All the three petitions are taken up together for final disposal with
the consent of learned counsels for the parties since all the three petitions arise



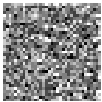
out of the same FIR and the prayer in all the three cases is for grant of regular bail.

2. All the three petitions have been filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioners in FIR No.42 dated 16.07.2023, under Sections 22, 25, 29, 61/85 of the NDPS Act, registered at Police Station Rureke Kalan, District Barnala, Punjab.

3. CRM-M-12345-2024 is the first regular bail petition, whereas CRM-M-10150-2024 and CRM-M-8248-2024 are the second regular bail petitions and as per the learned counsels for the petitioners, all the earlier petitions were dismissed as withdrawn.

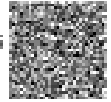
4. For the sake of convenience, the facts are taken from CRM-M-12345-2024, titled as *Padam Kumar alias Monu versus State of Punjab*.

5. Mr. P. S. Ahluwalia, learned counsel for Padam Kumar alias Monu (petitioner in CRM-M-12345-2024) submitted that it is a case where as per the prosecution story, the police had laid a naka and when one of the co-accused, namely, Raj Singh alighted from a bus, he was nabbed by the police and from him a recovery of 850 tablets of *Tramwel SR-100* was made. As per the FIR itself, the provision of Section 50 of the NDPS Act was complied with by calling a Gazetted Officer and search was conducted in his presence. He further submitted that during the course of investigation, the aforesaid co-accused, namely, Raj Singh suffered a disclosure statement on the basis of which all the three petitioners and one more co-accused, namely, Vivek were nominated and thereafter, the investigation was carried out. He further submitted that after the investigation was conducted, challan was presented by



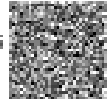
the police and now charges have also been framed by the learned trial Court on 02.07.2024.

6. Learned counsel for the petitioner-Padam Kumar alias Monu also submitted that the petitioner is a Chemist by profession and he is also a manufacturer of various medicines and with regard to his license to sell and retain, he has referred to Annexure P-5 which is a license issued by the competent authority on 24.08.2021, wherein he has been authorized to retain and deal with various medicines. So far as the manufacturing is concerned, he referred to Annexure P-6, which is a manufacturing license issued by the Government of India pertaining to various medicines which include *Rabeprazole Sodium* and *Domperidone* capsules, *Pantoprazole Gastro-resistant* and *Domperidone* Prolonged release capsules and *Pregabalin* capsules (*Snowgesic* and *Playergesic*). He further submitted that in the present case after the name of the petitioner was nominated, there was an alleged recovery of 6000 capsules of *Snowgesic-300* having *Pregabalin* salt, 4500 capsules of *Snowgesic-300* having *Pregabalin* salt and 2000 loose peach colour tablets having *Alprazolam* salt which was analyzed in the FSL and thereafter, again second recovery has been shown to be made from the petitioner from the premises of a transporter pertaining to 3,96,000 capsules of *Playergesic-300* having *Pregabalin* salt, 7000 loose tablets of pink colour having *Chlordiazepoxide* salt, 3000 loose tablets of white colour having *Tapentadol* salt and 2000 loose capsules of red colour having *Pregabalin* salt which was also analyzed in the FSL. He further submitted that details of the aforesaid alleged recovery from the petitioner has been specified in detail in para No.8 of the petition bearing CRM-M-12345-2024. He further submitted that so far as the



salt of *Pregabalin* is concerned, the same is not covered within the ambit of the NDPS Act and even the salt of *Tapentadol* is also not covered within the ambit of the NDPS Act and only the salts of *Alprazolam* and *Chlordiazepoxide* are covered within the ambit of the NDPS Act and as per the aforesaid details, 2000 loose tablets having *Alprazolam* salt and 7000 loose tablets having *Chlordiazepoxide* salt are now the only subject matter of the present recovery because the remaining recovery is not covered within the ambit of the NDPS Act.

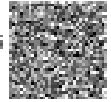
7. Learned counsel for the petitioner-Padam Kumar alias Monu further submitted that the aforesaid recovery is stated to be of loose tablets and the petitioner as a Chemist is dealing with the aforesaid medicines but after the recovery when the same were sent to the FSL, the aforesaid 7000 loose tablets were shown to be of the aforesaid salt on the basis of examination by the FSL but there is no iota of evidence to connect the aforesaid loose tablets with the present petitioner-Padam Kumar alias Monu, who is a Chemist. He further submitted that the petitioner has clean antecedents and he is not involved in any other case and it is only due to the aforesaid fact that he is a Chemist that he has been falsely implicated by the police. He further submitted that had there been any matching of any batch number or any other number etc. then it would have been a different case but from the loose tablets no presumption can be drawn and it is a case of false implication of the petitioner. He also submitted that the aforesaid tablets have been shown to be recovered from the car of the petitioner, whereas in fact they have been planted upon the petitioner. He further submitted that now that the petitioner has already faced incarceration for about 11 months and 14 days and considering the aforesaid facts and circumstances, he may be



considered for the grant of regular bail and the bar contained under Section 37 of the NDPS Act will not apply to the petitioner in view of the fact that the aforesaid tablets were loose tablets and no *prima facie* connection has been established between the petitioner and the aforesaid tablets during the course of investigation.

8. Learned counsel for the petitioner-Padam Kumar alias Monu further submitted that the name of the petitioner has been nominated on the basis of disclosure statement of the aforesaid co-accused, namely, Raj Singh and there is no other evidence to connect the petitioner with the recovery of aforesaid 850 tablets of *Tramwel SR-100* except for the disclosure statement of the aforesaid co-accused that he purchased the aforesaid intoxicant tablets from the petitioner-Padam Kumar alias Monu. He referred to a judgment passed by Hon'ble Supreme Court in **Tofan Singh versus State of Tamil Nadu, 2021 (4) SCC 1** to contend that it is a settled law that the disclosure statement of a co-accused is not admissible in evidence and therefore, on that ground as well the petitioner is entitled for the grant of regular bail.

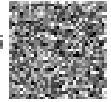
9. Mr. L. S. Sekhon, learned counsel for Harwinder Singh (petitioner in CRM-M-10150-2024) and Vicky Singh (petitioner in CRM-M-8248-2024) submitted that both the petitioners have also been nominated on the basis of disclosure statement of aforesaid co-accused, namely, Raj Singh and they have also been falsely implicated in the present case because of the fact that earlier both the petitioners were facing cases under the NDPS Act. He further submitted that petitioner-Harwinder Singh is involved in two more cases under the NDPS Act and petitioner-Vicky Singh is involved in three more cases under the NDPS Act and he has also been convicted in two of them and it was only



because of this reason that the police in order to cover up has falsely implicated both the petitioners on the basis of disclosure statement of a co-accused, which is not admissible in evidence. He has also referred to a judgment passed by Hon'ble Supreme Court in *Tofan Singh's case (supra)* in this regard. He further submitted that during the course of investigation, no connection has been shown between both the petitioners and the co-accused and no link evidence is there with regard to the aforesaid recovery. In this way the only reason for nomination of the petitioners is the disclosure statement of a co-accused, which is otherwise not admissible in evidence and therefore, on this premise also the petitioners are entitled for the grant of regular bail.

10. He also submitted that so far as petitioner-Harwinder Singh is concerned, there has been no recovery from him and so far as petitioner-Vicky Singh is concerned, the police has falsely shown recovery of 190 tablets of *Tramadol* from him, which also does not fall in the category of commercial quantity and therefore, qua the aforesaid two petitioners as well, the bar contained under Section 37 of the NDPS Act will not apply. He further submitted that petitioner-Harwinder Singh is in custody for about 11 months and 20 days and petitioner-Vicky Singh is in custody for about 10 months and 25 days and they may also be considered for the grant of regular bail.

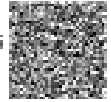
11. On the other hand, Mr. Adeshwar Singh Pannu, AAG, Punjab on instructions from ASI Ranjit Singh, who is present in the Court submitted that so far as the custody of all the three petitioners is concerned, the same is correct and it is also correct that now the charges in the present case have been framed by the learned trial Court on 02.07.2024. He further submitted that when the aforesaid co-accused, namely, Raj Kumar was arrested, there was a recovery of



850 tablets of *Tramwel SR-100* from him and on his disclosure statement, all the three petitioners were nominated. He further submitted that since recovery of the aforesaid tablets was made from the petitioner-Padam Kumar alias Monu, which may be loose tablets, the bar contained under Section 37 of the NDPS Act will operate qua the petitioner-Padam Kumar alias Monu. He also submitted that so far as the salts of *Pregabalin* and *Tapentadol* are concerned, the same do not fall within the ambit of the NDPS Act and therefore, so far as the recovery of aforesaid intoxicant tablets is concerned, they would not be the subject matter of the present case and the only subject matter would sustain pertaining to salts of *Alprazolam* and *Chlordiazepoxide* regarding which there were total 9000 (2000+7000) loose tablets which were recovered from the car of the petitioner-Padam Kumar alias Monu. He further submitted that so far as the antecedents of petitioner-Padam Kumar alias Monu are concerned, he has clean antecedents and he is not involved in any other case and so far as the antecedents of the other two petitioners, namely, Harwinder Singh and Vicky Singh are concerned, they are involved in some other cases under the NDPS Act.

12. I have heard the learned counsels for the parties.

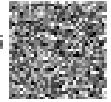
13. The facts of the present case suggest that one co-accused, namely, Raj Singh was apprehended by the police and there had been a recovery of 850 tablets of *Tramwel SR-100* from him. Thereafter, on the basis of his disclosure statement, the present three petitioners were nominated in the present case. So far as the petitioner-Padam Kumar alias Monu is concerned, there was an alleged recovery of a large number of intoxicant tablets from him but during the course of arguments, it transpired that a major portion of the aforesaid recovery



does not fall within the ambit of the NDPS Act, which is not denied by the learned State counsel. The recovery is only limited to 2000 loose tablets having *Alprazolam* salt and 7000 loose tablets having *Chlordiazepoxide* salt. During the course of arguments, a specific query was raised to the learned State counsel as to how the present three petitioners are connected with the aforesaid recovery because the tablets were loose tablets, to which he submitted that the tablets which were recovered from the car of the petitioner-Padam Kumar alias Monu were loose tablets and they were sent to the FSL where after examination they were found to be having salts of *Alprazolam* and *Chlordiazepoxide*. He further contended that apart from the aforesaid disclosure statement of the aforesaid co-accused pertaining to 850 tablets of *Tramwel SR-100* and the aforesaid recovery from the car of the petitioner, there is no other evidence available for connecting the petitioners with the present offence. So far as the licenses of the petitioner-Padam Kumar alias Monu are concerned, the same are also not disputed by the learned State counsel in this regard.

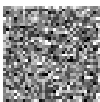
14. So far as the petitioner, namely, Harwinder Singh is concerned, there has been no recovery from him and so far as the petitioner, namely, Vicky Singh is concerned, recovery of 190 tablets of *Tramdol* has been shown to be made from him and they have also been nominated on the basis of disclosure statement of aforesaid co-accused. Again a specific query was raised to the learned State counsel as to whether there was any other evidence to connect the petitioners with the present recovery apart from the disclosure statement of the aforesaid co-accused, to which he submitted that there was no further evidence.

He further submitted that so far as petitioner-Harwinder Singh is concerned, no recovery has been made from him even after his arrest but so far as petitioner-



Vicky Singh is concerned, there has been a recovery of 190 tablets of *Tramadol*, which otherwise do not fall in the category of commercial quantity.

15. After hearing learned counsels for the parties, this Court is of the considered view that on the basis of the aforesaid facts and circumstances, the provision of Section 37 of the NDPS Act will not apply to the present three petitioners in view of the fact that they have been nominated on the basis of disclosure statement of the aforesaid co-accused. So far as the alleged recovery from the petitioner-Padam Kumar alias Monu is concerned, the major portion of the same does not fall within the ambit of the NDPS Act except for only 9000 (2000+7000) loose tablets regarding which otherwise also as per the learned counsels for the parties, no link has been established on the basis of any batch number etc. during the course of investigation. Even otherwise also, the petitioner-Padam Kumar alias Monu is stated to be having a license for manufacturing and also for retailing as per Annexure P-5 and Annexure P-6. Therefore, there are reasons to believe at this stage only for the purpose of considering the prayer of all the petitioners for grant of regular bail that they are not guilty of offence. It is made clear that the aforesaid observations are only meant for the purpose of deciding the bail petitions of the petitioners and the same would not mean an expression of opinion on the merits of the case and nor will it affect the merits of the trial. So far as the second ingredient for making a departure from the bar contained under Section 37 of the NDPS Act is concerned, it is not the case of the learned State counsel nor has it been so stated in the affidavit that in case the petitioners are released on bail, then they may influence any witness or may tamper with evidence or may flee from justice. Therefore, both the ingredients for making a departure from the bar



contained under Section 37 of the NDPS Act remain satisfied for the purpose of considering the grant of regular bail to the petitioners.

16. Consequently, all the three petitions are allowed. The petitioners shall be released on regular bail, if not required in any other case, subject to furnishing bail bonds/surety bonds to the satisfaction of the learned trial Court/Duty Magistrate concerned.

17. However, anything observed hereinabove shall not be treated as an expression of opinion on the merits of the case and is meant for the purpose of deciding the present petitions only.

09.07.2024
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

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