

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M-19031-2024
Date of decision : 23.05.2024

Gagandeep Ram Petitioner

versus

State of Punjab Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Prateek Pandit, Advocate
for the petitioner.

Mr. Mohit Kapoor, Sr. DAG, Punjab.

PANKAJ JAIN, J. (Oral)

1. Present petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case bearing FIR No.45 dated 20.04.2022, registered for the offences punishable under Sections 21, 22 and 29 of NDPS Act, 1985 at Police Station Sadar Jalandhar, District Jalandhar.
2. As per the case of prosecution, the petitioner was apprehended which led to recovery of 2.60 gms of heroin and 189 tablets of light orange colour.
3. Counsel for the petitioner has attacked prosecution primarily on two grounds. Firstly, he has drawn attention of this Court to ruqa which has been placed on record as Annexure P-2 dated 20.04.2022 drawn at 4.40 p.m. He further takes the Court to the FIR to show that the same was received at Police Station at 05.25 p.m. and the
FIR came into being at 18.35 hours on the same date i.e. 20.04.2022.



Further reference has been made to recovery memo Annexure P-3 which is prior to ruqa as well as FIR as per the sequence of events of the prosecution case, but still bears the FIR number. He thus submits that it is a case of false implication.

4. The second limb of the argument is the alleged discrepancy in the tablets recovered i.e. 189. He refers to the forensic report Annexure P-4 to submit that even though the tablets were recovered as a single contraband, but the same was tested by the laboratories separately. 151 tablets of light peach colour were found to be Alprazolam and 38 tablets which has been described in the forensic report as dark peach colour have been found to be Atizolam. It is the Atizolam on account of which the contraband has attained the character of 'commercial quantity'. He thus submits that there being material discrepancy, the concoction cannot be ruled out.

5. Short reply by way of affidavit of Sukhninder Singh, PPS, Assistant Commissioner of Police, Sub Div V, Cantonment Jalandhar on behalf of the respondent-State has been filed to explain the aforesaid dichotomies. Para 14 thereof reads as under:-

“14. That thereafter in reply to the aforesaid Show Cause Notice dated 08.05.2024, ASI Rajinder Singh 218/Jalandhar (Complainant) submitted his written reply dated 13.05.2024, stating that in the recovery memo there is typed FIR number/details on it as the same were added after verifying the information/detail of the FIR telephonically by him.

That ASI Rajinder Singh 218/Jalandhar further stated in his reply that the parcel of the recovery was duly prepared and that the colour of the 189



Intoxicating tablets was light peach. That even as per the witnesses present at the spot of occurrence and Ld. Additional CJM, Jalandhar as per the inventory made under Section 52-A NDPS Act, also the colour of the 189 Intoxicating tablets was light peach. That even otherwise the mild change in the colour of the tablets i.e. light peach and dark peach is only the outer look of the tablets, the exact chemical and the colour was obviously to be examined by the FSL. The mild change in the colour cannot lead to a conclusion that the police or the investigating agency has planted the recovery.”

6. Mr. Kapoor thus submits that merely for the reason that the recovery memo which is a typed document contained FIR number, the same cannot lead to the inference that the petitioner is being falsely implicated. He further submits that the provisions of Section 52-A of the NDPS Act were complied with. The parcels were sent after having been sealed by the Magistrate. It is when the same were examined by experts at the forensic lab that they found that both tablets though being of the same colour were different in their appearance, one being dark orange colour and other being light orange colour. He submits that from the report of the forensic lab itself, it is evident that the seals were found to be intact and thus the plea of concoction of the contraband cannot be accepted.

7. Custody certificate has been produced. As per the same, the petitioner has undergone actual custody of more than 02 years and 28 days. The petitioner is facing another prosecution under NDPS Act though the same is under qua non-commercial quantity in which the

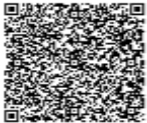


petitioner already stands admitted to bail. The petitioner is not prior convict for offence punishable under NDPS Act. 04 out of 11 witnesses could be examined till now.

8. Keeping in view the incarceration already suffered by the petitioner, the present petition is allowed. Petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the Ld. Trial Court/Duty Magistrate, concerned. However, in addition to conditions that may be imposed by the Trial Court/Duty Magistrate concerned, the petitioner shall remain bound by the following conditions :-

- (i) The petitioner shall not mis-use the liberty granted.
- (ii) The petitioner shall not tamper with any evidence oral or documentary during the trial.
- (iii) The petitioner shall not absent himself on any date before the trial.
- (iv) The petitioner shall not commit any offence while on bail.
- (v) The petitioner shall deposit his passport, if any with the trial Court.
- (vi) The petitioner shall give his cellphone number to the police authorities and shall not change his cell-phone number without permission of the trial Court.
- (vii) The petitioner shall not in any manner try to delay the trial.

9. In case of breach of any of the aforesaid conditions and those which may be imposed by the Trial Court, the prosecution shall be at liberty to move cancellation of bail of the petitioner.



10. Ordered accordingly.

(PANKAJ JAIN)
JUDGE

23.05.2024
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No