

2024:PHHC:112897



IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

237

CRM-M-20467-2024 (O&M)
Date of decision: 31.08.2024

Sunil Kumar

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Rituraj Singh, Advocate
for the petitioner.

Mr. A. S. Samra, AAG, Punjab.

MANISHA BATRA, J. (Oral)

1. Prayer in this petition, filed under Section 439 Cr.P.C., is for grant of regular bail to the petitioner in FIR No. 0166 dated 09.07.2022, registered under Sections 22 and 29 of the NDPS Act, 1985 at Police Station Model Town, District Hoshiarpur.
2. Brief facts of the case relevant for the disposal of the present petition are that on 17.08.2023, the petitioner was apprehended by a police party and recovery of 52 grams of intoxicant substance was effected from him. The petitioner was formally arrested at the spot. After completion of necessary investigation and usual formalities, *challan* under Section 173 Cr.P.C. was presented in the Court and presently, the petitioner is facing trial for commission of aforementioned offence. He had moved an application for grant of regular bail before the trial Court but the same had been dismissed, vide order dated 13.03.2024.

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3. Learned counsel for the petitioner has argued that the petitioner he has been falsely implicated in this case. He was neither found present at the spot nor any alleged recovery of contraband was effected from him. In fact, the contraband allegedly recovered from the petitioner was planted upon him. It is further argued that no independent witness was joined at the time of effecting alleged recovery. There is delay of 03 days in sending the sample to laboratory for its examination. The petitioner is in judicial custody since 15.01.2024. Investigation has since been completed and challan has been presented. The trial is likely to take time. No useful purpose would be served by keeping him in custody anymore. Therefore, it is urged that the petition deserves to be allowed and the petitioner deserves to be granted benefit of regular bail.

4. *Per contra*, learned State counsel, on the basis of the status report, has vehemently argued that the petitioner is not entitled to get benefit of bail as 52 grams of intoxicant substance was recovered from him. FSL report has been received, as per which, the recovery effected from the petitioner contained Tramadol Hydrochloride and Diphenoxylate Hydrochloride salts and since the commercial quantity of Tramadol Hydrochloride is 250 grams and that of Diphenoxylate Hydrochloride is 50 grams, the whole quantity of the contraband is to be considered qua Diphenoxylate Hydrochloride, which exceeds commercial quantity. Hence, the rigors of Section 37 of the NDPS Act would be attracted in this case. There are chances of the petitioner's absconding and indulging in similar offences, if extended benefit of bail. The trial may be expedited. Hence, it is urged that the petition is liable to be dismissed.

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

6. As per the allegations, the petitioner was apprehended by the police party and the recovery of 52 grams of intoxicant substance was effected from him. As per FSL report, the recovery effected from the petitioner contained two salts i.e. *Tramadol Hydrochloride* and *Diphenoxylate Hydrochloride* and since whole quantity of the contraband has to be considered qua *Diphenoxylate Hydrochloride*, commercial quantity of which is 50 grams, the recovery of the contraband effected from the petitioner falls under the commercial quantity. Hence, the rigors of Section 37 of the NDPS Act would be attracted in this case. A perusal of the order dated 13.03.2024, passed by the trial Court dismissing the bail application of the petitioner, reveals that he was granted concession of interim bail but he absented from the Court proceedings and ultimately he was declared a proclaimed offender, vide order dated 06.11.2023. Therefore, the apprehension expressed by learned State counsel that the petitioner may abscond cannot be stated to be unfounded. The arguments raised by learned counsel for the petitioner with regard to discrepancies in investigation cannot be looked into at this stage as the same is to be decided by the trial Court after appreciating the entire evidence and material placed on record before it. Therefore, keeping in view the gravity of allegations as levelled against the petitioner, the quantity of alleged contraband recovered from the petitioner, the quantum of sentence which the conviction may entail and the attendant facts and circumstances of the case, this Court is of the considered opinion that he does not deserve to be granted concession of regular bail, at

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this stage. Accordingly, the present petition is dismissed.

7. It is made clear that any observation made herein above is only for the purpose of deciding the present petition and the same shall have no bearing on the merits of the case.

31.08.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No