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

**CRM-M-21452-2024 (O&M)
DATE OF DECISION: 28.05.2024**

GURPREET SINGH @ GOPI

...PETITIONER

Versus

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Saurav Bhatia, Advocate with
Mr. HPS Bungar, Advocate for the petitioner(s).
Mr. J.S. Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

CRM-19930-2024

This application has been filed for placing on record the statement of the complainant as Annexure P-6 to Annexure P-10.

For the reasons recorded in the application, the same is allowed and the statement of the complainant as Annexure P-6 to Annexure P-10 are taken on record.

Main Case

1. The jurisdiction of this Court under Section 439 Cr.P.C., has been invoked for the grant of regular bail to the petitioner in FIR No. 117, dated 17.07.2023, under Sections 22 of The Narcotic Drugs and Psychotropic Substances Act, 1985 and Section 29 of the NDPS Act registered at Police Station Garhshankar, District Hoshiarpur.

2. Learned counsel for the petitioner contends that 102 grams of intoxicating substance was allegedly recovered from the capri worn

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by the petitioner but there is delay of 7 days in conducting the test of FSL from which it was ascertained that recovered contraband contains salt of Etizolam but in the FSL it was never mentioned therein. In the absence of such report, it is difficult to determine the quantity of the substance to be commercial in nature which is another aspect on which counsel for the petitioner has laid stress. The FIR was not yet registered on the recovery memo. The details of the FIR in view of the offences and the provisions under which the offences has been made out was already written thereupon on the recovery memo which indicates the false implication. In that regard, reliance has been placed upon on the dictum passed in *Didar Singh @ Dara vs. State of Punjab 2010(3) RCR (Criminal) 337* and *Ajay Malik vs. UT Chandigarh 2009(3) RCR (Criminal) 49*.

3. It is also contended that there was violation of Sections 50/50-A/41-B and 41-D Cr.P.C, since the petitioner was not arrested in front of a public witness, hence the procedure is vitiated.

4. Learned State counsel has filed the custody certificate of the petitioner, which is taken on record. According to which, the petitioner is behind bars for the 10 months and 9 days who is not involved in any other case. He has opposed the prayer made in the present petition stating that quantity of contraband recovered is 102 grams of Etizolam which is clearly mentioned in the FSL report, therefore such defence is not available to the petitioner. Further, the petitioner was arrested on the spot along with motorcycle he was riding.



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He further controverts the argument qua the mentioning of particulars of the FIR from the recovery memo i.e. Annexures P-8 to P-10. He makes an attempt to defend urging that the number of FIR was written with pen in handwriting of the officer who prepared the recovery memo.

5. Be that as it may, considering the facts that the investigation is complete and the petitioner is not involved in any other case and as per the principle of the criminal jurisprudence, no one should be considered as guilty till the guilt is proved beyond reasonable doubt, whereas in the instant case, trial is prolonged and likely to take long time in the light of the fact that charges have been framed on 29.01.2024 and out of 12 prosecution witnesses, none has been examined and detaining the petitioner behind the bars for an indefinite period would amount to violation of Article 21 of the Constitution of India and is against the principle "Bail is a rule, jail is an exception" as elucidated in the judgement of Apex Court in "***Dataram Singh vs. State of Uttar Pradesh and another***;; (2018) 3 SCC 22".

6. As far as the argument qua the mentioning of the particulars of the FIR in advance on the recovery memo is concerned, the State Counsel makes an attempt to defend but could not explain and controvert the fact that provisions of offences like Section 22 of the NDPS Act were already incorporated on the recovery memo except the filling up of number of FIR with hands. In fact, the investigating agency/law enforcing agency is adopting stereo type recovery memo



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which has already printed upon the provisions and Sections of IPC or the NDPS Act whatsoever in advance before even conducting the search and preparation of recovery memo which definitely tantamount to vitiated proceedings on their part, and therefore, transparency and fairness on the part of the investigating agency comes under cloud raising doubt on its own story.

7. In view of the aforesaid discussions made hereinabove, the petitioner is directed to be released on regular bail on his furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

8. However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

9. Petition is disposed of.

(SANDEEP MOUDGIL)
JUDGE

28.05.2024
anuradha

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>