

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-43406-2024
Reserved on: 08.11.2024
Pronounced on: 13.11.2024

Ashok Kumar @ Shoki ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Karan Singh Sidhu, Advocate
for the petitioner.

Ms. Swati Batra, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
29	27.02.2024	Sadar Fazilka, District Fazilka	22/29 of NDPS Act

1. The petitioner incarcerated in the FIR captioned above had come up before this Court under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, [BNSS], seeking regular bail.
2. In paragraph 15 of the bail petition, the accused declares that he has no criminal antecedents.
3. The facts and allegations are taken from the reply filed by the State. On Feb 27, 2024, based on prior information, the Police seized 500 tablets containing Tramadol Hydrochloride from the petitioner's possession. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and CrPC, 1973.
4. The petitioner's counsel prays for bail by imposing any stringent conditions and contends that further pre-trial incarceration would cause an irreversible injustice to the petitioner and their family.
5. The State's counsel opposes bail and refers to the reply.
6. It shall be appropriate to refer to para 7 of the bail petition, which reads as follows:

“7. That Tramadol Hydrochloride salt as per NDPS Schedule is commercial if it exceeds 250 grams. However the recovery from the petitioner is just 194.5 grams which is non

commercial in nature.”

7. It would be appropriate to refer to the following portions of the reply, which read as follows:

“4(a). That on 27.02.2024, when the police party while on patrolling duty reached near T- point Rana, then a secret information was received to that the effect petitioner Ashok Kumar alias Shoki and Gurcharan Singh alias Channi son of Jaswant Singh resident of village Nawa Salemsah are indulging in the trade of intoxicant tablets and today both of them are coming on motorcycle No.PB-22-U-9431 make Hero Splender Plus colour black from village Hasta Kalan to Fazilka city. If blockading is set up, then above said persons can be apprehended. alongwith intoxicant tablets. As per said secret information, FIR No.221 dated 01.11.2023 under sections 22, 29/61/85 of NDPS Act 1985 was registered at Police Station, Sadar Fazilka against petitioner and aforesaid Gurcharan Singh alias Channi.

b) That after registration of present FIR, blockading was set up at Link road village Hasta Kalan, then a motorcycle was seen coming from village Hasta Kalan side and the same was signaled to stop. Driver of said motorcycle tried to turn behind the said motorcycle, but the motorcycle was stopped and both the said youth were apprehended by police party. On asking, the driver disclosed his name as Ashok Kumar alias Shoki resident of Hasta Kalan, and the pillion rider disclosed his name as Gurcharan Singh alias Channi son of Jaswant singh resident of village Nawa Salemsah. SI Tarsem Sharma told both the said persons that their search and search their said motorcycle is to be conducted on suspicion basis, but you have a legal right to get your search conducted through a Magistrate or gazetted officer. But they told that they want through a to get their search conducted Gazetted officer. Accordingly, separate Memos of disagreement were prepared. Thereafter, Rachhpal Singh, PPS, D.S.P. (D) Fazilka was called at the spot to carry out further investigation. Said D.S.P. introduced himself to the said apprehended persons and told them that their search and search their said motorcycle is to be conducted on suspicion basis, but you have a legal right to get your search conducted through a Magistrate or gazetted officer. Thereupon, the said accused gave their consent for their search. Accordingly, separate Consent Memos were prepared. Efforts were made to join a public witness, but no one was ready. On checking of the petitioner, 50 strips intoxicating tablets (total 500 tablets) make Tramadol Hydrochloride Tablets 100 mg Clobidol present 100 SR. were recovered petitioner, while 45 from strips intoxicating tablets (total 450 tablets) make Tramadol Hydrochloride Tablets 100 mg CLOBIDOL-100 SR' were recovered from said accused and the same were taken into police custody as per law. In this way, total 950 intoxicant tablets were recovered from both the accused. Thereafter, the accused were arrested as per law.”

8. Thus, the total recovery from the petitioner’s possession was 500 tablets. As per the FSL report attached to the reply, the weight of the tablet is 389 mgs per tablet. Thus, the weight of 500 tablets would be around 194.5 grams.

9. Dealing in 194.5 grams of Tramadol is a punishable offense under the NDPS Act in the following terms:

Substance Name	Tramadol
Quantity detained	194.5 Gram
Quantity type	Intermediate
<i>Drug Quantity in % to upper limit of Intermediate</i>	77.80%

<i>Specified as small & Commercial in S.2(viia) & 2(xxiii) NDPS Act, 1985</i>	
Notification No	S.O.1762(E)
dated	4/26/2018
Sr. No.	238 ZH
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	Tramadol
Other non-proprietary name	*****
Chemical Name	*****
Small Quantity	5 Gram
Commercial Quantity	250 Gram

Declared as punishable under NDPS Act and as per schedule defined in S.2(xi) & 2(xxiii) NDPS Act, 1985	
Notification No	S.O.1761(E) & S.O. 3448(E)
dated	26-Apr-2018 & 26-Jul-2018
Sr. No.	110Y
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	Tramadol
Other non-proprietary name	*****
Chemical Name	*****

10. Given this, the rigors of S. 37 of the NDPS Act do not apply in the present case.

11. Section 2 (vii-a) of the NDPS Act defines commercial quantity as the quantity greater than the quantity specified in the schedule. Section 2 (xxiii-a) defines a small quantity as a quantity less than the quantity specified in the table of the NDPS Act. The remaining quantity falls in an undefined category, generally called an intermediate quantity. All sections in the NDPS Act specify an offence and mention the minimum and maximum sentence, depending upon the quantity of the substance. The commercial quantity mandates a minimum sentence of ten years of imprisonment and a minimum fine of Rupees One hundred thousand, and bail is subject to the riders mandated in S. 37 of

the NDPS Act. When the quantity is less than commercial, the restrictions of Section 37 of the NDPS Act will not attract, and the factors for bail become similar to the offence regular statutes.

12. In Sami Ullaha v Superintendent Narcotic Control Bureau, (2008) 16 SCC 471, the Hon'ble Supreme Court holds that in intermediate quantity, the rigors of the provisions of Section 37 may not be justified.

13. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act.

14. The pre-trial incarceration should not be a replica of post-conviction sentencing. There is sufficient primafacie evidence connecting the petitioner with the alleged crime. However, per paragraph 4 of the bail petition, the petitioner has been in custody since 27.02.2024. Per the custody certificate dated 07.11.2024, the petitioner's total custody in this FIR is 08 months and 08 days. Given the penal provisions invoked viz-a-viz pre-trial custody, coupled with the primafacie analysis of the nature of allegations, and the other factors peculiar to this case, there would be no justifiability further pre-trial incarceration at this stage.

15. Without commenting on the case's merits, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner makes a case for bail. This order shall come into force from the time it is uploaded on the official webpage of this Court.

16. Given above, provided the petitioner is not required in any other case, the petitioner shall be released on bail in the FIR captioned above subject to furnishing bonds to the satisfaction of the concerned Court and due to unavailability before any nearest Ilaqa Magistrate/duty Magistrate. Before accepting the surety, the concerned Court must be satisfied that if the accused fails to appear, such surety can produce the accused.

17. While furnishing a personal bond, the petitioner shall mention the following personal identification details:

1.	AADHAR number	
2.	Passport number (If available) and when the attesting officer/court considers it appropriate or considers the accused a flight risk.	
3.	Mobile number (If available)	
4.	E-Mail id (If available)	

18. This order is subject to the petitioner's complying with the following terms.

19. The petitioner shall abide by all statutory bond conditions and appear before the concerned Court(s) on all dates. The petitioner shall not tamper with the evidence, influence, browbeat, pressurize, induce, threaten, or promise, directly or indirectly, any witnesses, Police officials, or any other person acquainted with the facts and circumstances of the case or dissuade them from disclosing such facts to the Police or the Court.

20. The possibility of the accused influencing the investigation, tampering with evidence, intimidating witnesses, and the likelihood of fleeing justice can be taken care of by imposing elaborative and stringent conditions. In *Sushila Aggarwal v. State (NCT of Delhi)*, 2020:INSC:106 [Para 92], (2020) 5 SCC 1, Para 92, the Constitutional Bench held that unusually, subject to the evidence produced, the Courts can impose restrictive conditions.

21. Given the background of allegations against the petitioner, it becomes paramount to protect the drug detection squad, their family members, as well as the members of society, and incapacitating the accused would be one of the primary options until the filing of the closure report or discharge, or acquittal. Consequently, it would be appropriate to restrict the possession of firearm(s). [This restriction is being imposed based on the preponderance of evidence of probability and not of evidence of certainty, i.e., beyond reasonable doubt; and as such, it is not to be construed as an intermediate sanction]. Given the nature of the allegations and the other circumstances peculiar to this case, the petitioner shall surrender all weapons, firearms, ammunition, if any, along with the arms license to the concerned authority within fifteen days from release from prison and inform the Investigator about the compliance. However, subject to the Indian Arms Act, 1959, the petitioner shall be entitled to renew and take it back in case of acquittal in this case, provided otherwise permissible in the concerned rules. Restricting firearms would instill confidence in the victim(s), their families, and society; it would also restrain the accused from influencing the witnesses and repeating the offense.

22. This bail is conditional, and the foundational condition is that if the petitioner repeats the offense, the State may file an application for cancellation of this bail before the Sessions Court, which shall be at liberty to cancel this bail.

23. Any observation made hereinabove is neither an expression of opinion on the case's merits nor shall the trial Court advert to these comments.

24. A certified copy of this order would not be needed for furnishing bonds, and any Advocate for the Petitioner can download this order along with case status from the official web page of this Court and attest it to be a true copy. If the attesting officer wants to verify its authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.

25. **Petition allowed** in terms mentioned above. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

13.11.2024
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: No.