



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-50127-2024
DECIDED ON: 18.11.2024

HARBHOL KHAN

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Janak Singh Bhinder, Advocate
for the petitioner.

Mr. Jaspal Singh Guru, AAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. Relief sought

The jurisdiction of this Court has been invoked under Section 482 BNSS, 2023 for grant of anticipatory bail to the petitioner in FIR No.60, dated 30.06.2024, under Sections 21 & 22 of NDPS Act (offence under Section 29 of NDPS Act added later on), registered at Police Station Chhajali, Tehsil Sunam, District Sangrur.

2. Prosecution story setup in the present case as per the version in the FIR as under:-

“Copy of Ruga. "SHO PS Chhajali, Fateh. Today I, ASI alongwith SI Des Raj 451/SGR, Ct. Manpreet Singh 1684/SGR, PHG Ajaib Singh 48036, PHG Babu Singh 48150 by riding Government Vehicle No. PB13-AR-6141, whose driver is ASI Gurbax Singh 474, and by taking along laptop and printer were going to Village Khadial

fox patrolling and checking of suspicious persons and when police party reached Sangrur-Patran Road T-Point Khadial in area of Mehal Kalan then one person having trimmed skull hair wearing kurta-pyjama was seen standing at the turn, who on seeing police party took out one transparent polythene bag from right pocket of his kurta and threw on the ground. Time was about 06:30 PM and on the basis of suspicion I, ASI got stopped our vehicle and apprehended that person with help of co-employees and asked him about his name and address and he disclosed his name as Sadig Khan son of Dina Khan resident of Khadial, Age about 44 Years, Height 5 Feet 9 Inch, Complexion Wheatish, 786 inscribed on right hand. Then I, ASI tried to join any private witness with police party but many persons refused to join police party as witness and went away by expressing their helplessness. Then I, ASI went near the transparent polythene bag thrown by above mentioned Sadig Khan and saw that TRAMADOL 100 mg. 100 SR could be easily read on the strips of intoxicating tablets inside the transparent polythene bag. Then I, ASI lifted the transparent polythene bag, took out the strips and counted and total were 6 strips each strip having 10 intoxicating tablets, total were 60 intoxicating tablets of TRAMADOL 100 mg. 100 SR, Batch No. deleted on each and every strip. Then I put recovered 60 intoxicating tablets (6 strips) of TRAMADOL 100 mg. 100 SR in one cloth bag and prepared parcel and sealed the parcel with my stamp impression KS. Prepared sample seal separately. After use I handed over my stamp to ASI Des Raj 451/SGR PP Mehlan. Then I, ASI took above mentioned sealed parcel and sample seal in police custody with separate memo. Signatures of witnesses taken on memo. Above mentioned Sadig Khan by keeping

intoxicating tablets in his possession without permit or licenses has committed an offence punishable under sections 21/61/85 NDPS Act. Therefore, Ruga is being sent to police station by the hand of PHG Ajaib Singh 48036 for registration of FIR against above mentioned Sadiq Khan under sections 21/61/85 NDPS Act. Number be intimated after registration of FIR. Intimation be given at Control Room Sangrur. I alongwith co-employees am investigating at the spot. Present in area of Mehlan (Patran-Sangrur Road T-Point Khadial) at time 7:30 PM. Sd/- Karam Singh ASI 742 Incharge PP Mehlan PS Chhajali date 30.06.2024.”

3. **Contention**

On behalf of the petitioner

Learned counsel for the petitioner contends that the petitioner was not initially named in the instant FIR but was subsequently roped in only on the basis of disclosure statement of co-accused Sudik Khan, from whose possession the alleged recovery of 60 intoxicant tablets of Tramadol was effected. He further contends that nothing has been recovered from the possession of the present petitioner. It has been contended on behalf of the petitioner that he is ready and willing to join the investigation and cooperate with the investigating officer.

On behalf of the State

Learned State Counsel appearing on advance notice, has filed status report by way of an affidavit of Mr. Prithvi Singh PPS, Deputy Superintendent of Police, Sub Division Dirba on behalf of respondent-State, which is taken on record. He seeks dismissal of the instant petition on the

ground that the petitioner is a habitual offender as he is involved in 10 more cases, details of which are as under:-

Sr. No.	FIR No, date, offence(s) and name of police station	Status of case.
1.	FIR No.85, dated 26.06.2011 u/s 61/1/14 Excise Act, P.S. Chhajli	Convicted on 27.06.2011 and fined of Rs.10,000/-
2.	FIR No.57, dated 20.08.2012, u/s 18 NDPS Act P.S. Bhikhi	Acquitted on 17.04.2014
3.	FIR No.30, dated 28.02.2016 u/s 15 NDPS Act P.S. Chhajli.	Acquitted on 08.09.2017
4.	FIR No.91, dated 24.06.2018 u/s 61 Excise Act P.S. Chhajli	Under trial.
5.	FIR No.165 dated 21.10.2018 u/s 61 Excise Act P.S. Chhajli	Convicted on 04.10.2024
6.	FIR No.162 dated 11.06.2020 u/s 61 Excise Act P.S. City Sunam	Under trial
7.	FIR No.216 dated 03.11.2020 u/s 61, 78 NDPS Act and 25 Arms Act and 420, 465, 467, 468, 471, 483, 120-B IPC, P.S. City 1 Sangrur	Under trial
8.	FIR No. 24 dated 04.04.2021 u/s 61 Excise Act P.S. Chhajli	Convicted on 10.11.2023
9.	FIR No.79, dated 09.08.2021 u/s 61 Excise Act P.S. Chhajli	Convicted on 01.02.2024
10.	FIR No.50 dated 14.03.2023 u/s 18, 29 NDPS Act P.S. City Sunam	Under trial

4. Analysis

Be that as it may, considering the fact that the petitioner was nominated as an accused only on the basis of disclosure statement of co-accused Sudik Khan from whose posession the alleged contraband i.e. 60

intoxicant tablets of Tramadol were recovered in addition to the fact that custodial interrogation of the petitioner is not required at this stage as nothing is to be recovered from him.

As far as the pendency of other cases and involvement of the petitioner in other cases is concerned, reliance can be placed upon the order of this Court rendered in CRM-M-25914-2022 titled as ***“Baljinder Singh alias Rock vs. State of Punjab”*** decided on 02.03.2023, wherein, while referring Article 21 of the Constitution of India, this Court has held that no doubt, at the time of granting bail, the criminal antecedents of the petitioner are to be looked into but at the same time it is equally true that the appreciation of evidence during the course of trial has to be looked into with reference to the evidence in that case alone and not with respect to the evidence in the other pending cases. In such eventuality, strict adherence to the rule of denial of bail on account of pendency of other cases/convictions in all probability would land the petitioner in a situation of denial of concession of bail.

5. **Decision**

In the light of above, the petitioner is directed to be released on anticipatory bail subject to his joining investigation with the Investigating Officer concerned within a period of one week from today, on furnishing of personal/surety bonds to his satisfaction. The petitioner shall also abide by the terms and conditions as envisaged under Section 482(2) of BNSS, which are reproduced below:-

‘When the High Court or the Court of Session makes a direction under sub-section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including-

- (i) a condition that the person shall make himself available for interrogation by a police officer as and when required;
- (ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;
- (iii) a condition that the person shall not leave India without the previous permission of the Court;
- (iv) such other condition as may be imposed under sub-section (3) of section 480, as if the bail were granted under that section.'

However, it is made clear that in case the petitioner does not comply with the aforesaid direction of joining the investigation within a period of one weeeek, the order passed by this Court today shall automatically stands cancelled.

In the aforesaid terms, the present petition stands allowed.

18.11.2024
Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

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