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

CRM M-58667-2023 (O&M)

Date of Decision: 09.05.2024

Harjeet Singh @ Jeeta

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR.JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Abhay Sher Singh, Advocate for
Mr. Karandeep S. Sidhu, Advocate,
for the petitioner.

Mr. Neeraj Madaan, Sr. DAG, Punjab.

MAHABIR SINGH SINDHU. J.

Present petition has been filed under Section 439 of Code of Criminal Procedure, 1973 for seeking bail pending trial in FIR No.55 dated 17.04.2023 registered under Sections 22 of Narcotic Drugs & Psychotropic Substances Act, 1985 (for short "Act") (Section 29 NDPS Act added later on), at Police Station Guruharsahai, District Ferozepur.

2. Allegations are that petitioner was found in possession of 2500 intoxicants tablets (Tramadol Hydrochloride 100 mg each).

3. Learned counsel submits that petitioner has been falsely implicated in the present case and raised the following contentions:-

(i) there was no batch number or expiry date on the alleged contraband and out of that some strips were sent for analysis to FSL; thus, report received in this regard would be of no help to the prosecution case;



(ii) alleged recovery was effected after sunset from the motorcycle of petitioner; thus, there is clear violation of Section 42 of the Act; and

(iii) charges were framed on 17.02.2024; but none of the prosecution witness has been examined till date; hence trial is likely to take sufficient long time.

In support of the above contentions, learned counsel for petitioner has placed reliance on (i) ***Inderjeet Singh vs. State of Punjab 2021(3) Law Herald 1902***; (ii) ***Karam Singh vs. State of Punjab 2019(1) Law Herald 32***; (iii) ***Tejinder Singh @ Prince Vs. State of Punjab (CRM-M-13812-2018 decided on 17.04.2018)***.

4. *Per contra*, learned State counsel while opposing the prayer submits that trial is at the initial stage and recovery alleged against the petitioner is commercial in nature. Also submits that as per the FSL report, contraband recovered from the petitioner is Tramadol; thus, plea of batch number would not be helpful, at this stage, when charges have already been framed by learned Special Court.

5. Heard learned counsel for the parties and perused the paper-book.

6. As per prosecution case, recovery alleged against the petitioner is commercial in nature and there is specific bar under Section 37 of the Act for granting bail in such cases. Moreover, FSL report has already been received and relevant part of the same reads as under:-

“The tablets contained in the parcel under reference have been analyzed separately by Chemical, TLC and instrumental analysis. On the basis of analysis, the ingredient found present in the tablets contained in the parcel has been given at serial No.8 (Identification and tests) of this Court.



8. Identification & Tests:

Tramadol Hydrochloride: *Found present in the tablets contained in the parcel.”*

Apart that, in view of the provisions of Section 293 Cr.P.C, such a report would be *per se* admissible, unless proved otherwise during trial.

7. In view of the above, contention of the petitioner that there was no batch number on the contraband; and/or that sample sent for analysis was improper, is not acceptable at this stage.

8. It is specific case of the prosecution that alleged recovery was effected from conscious possession of the petitioner and there was no internal search of the motor-cycle; hence plea regarding violation of Section 42 of the Act is also liable to be rejected.

9. Above all, recovery alleged against the petitioner is commercial in nature; therefore, this Court is not inclined to record twin test satisfaction in his favour in terms of Section 37 of the Act. Moreover, petitioner cannot claim the benefit of non-examination of witnesses, at this stage, when FIR was registered only on 17.04.2023 and charges have already been framed on 17.02.2024, thus; trial is going on at normal pace.

10. The case law cited by learned counsel for petitioner is distinguishable for the reason that in **Inderjeet Singh’s case (supra)**, the strips were not having any batch numbers and other particulars and in ***Karam Singh’s and Tejinder Singh’s cases (supra)***, the batch number was absent when the recovery was made, but in the present case, it is specifically mentioned in the FSL report (P-5) that “*batch number/mfg/exp.removed*”.

11. Consequently, there is no option, except to dismiss the petition.

12. Ordered accordingly.

13. The above observations be not construed as an expression of opinion on the merits of the case in any manner.



14. Pending application(s), if any, shall also stand disposed off.

09.05.2024
SN

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable: Yes/No