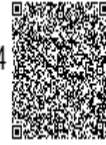


2025:PHHC:011804



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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-2209-2025
DECIDED ON: 21.01.2025

SHIV KUMAR

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. M.S. Kathuria, Advocate
for the petitioner.

Mr. Jasjit Singh Rattu, DAG Punjab.

SANDEEP MOUDGIL, J

1. Relief Sought

The jurisdiction of this Court has been invoked for the 1st time under Section 483 of BNSS, 2023 seeking regular bail to the petitioner in case FIR No.162 dated 10.08.2023, under Section 22 of NDPS Act, 1985, registered at Police Station City Phagwara, District Kapurthala.

2. Prosecution story, set up in the present case as per the version in the FIR read as under :-

'To, the SHO, today the present SI along with ASI Kulwinder singh 475/KP, ASI Balwinder Singh 184/KP, Constable Ravinder Parmar No. 817/KP, Harmanpreet singh, KP along with PHG Sandeep Kumar No. 15818 on private vehicles were patrolling or bad elements in this regard when we turned from Busra Palace chowk after

crossing city Police station Phagwara, Khobra road at the moment in opposite direction near transformer in front of cloth shops to young boys were seen carrying heavy polythene bags in their hands and on looking at the police party they threw respective polythene bags from their hands in near by bushes and suddenly started running backwards, which were over powered by the present SI with the help of colleagues and asked for their names and own asking first person told his name as Shiv Kumar s/o Hakam Chand r/o Master colony street no. 9 house no. 611 police station daresi district Ludhiana and second person told his name as Sanjiv Kapoor S/o Ved parkash r/o B/6, 1167-9 /K, Street No. 21 Harbanspura Police Station division no. 3 district Ludhiana. That when the present SI asked Shiv Kumar s/o Hakam Chand regarding black polythene bag that he had thrown then he told that it contains in toxicant capsules and in the same manner when the present SI asked Sanjiv Kumar s/o Ved Parkash regarding polythene bag that he had thrown he also told that it contained intoxicant tablets. On which before checking two polythene bags thrown by above named persons tried to joint public witness but no found willing. On which present SI in presence of other colleagues checked the black color polythene bag thrown by above named Shiv Kumar by getting it lifted by Shiv Kumar himself then it is found it is contained 1150 intoxicant capsules of mehroon color on which PYN-SPAS PLUS was engraved. In the same manner present SI checked the black color polythene bag thrown by above named Sanjiv Kapoor by getting it lifted by Sanjeev Kapoor himself then it is found containing intoxicant tablets of orange color without any packing which came to 550 on counting. Thereafter the present SI took into possession the recovered 1150 intoxicant capsule of mehroon color and 550 intoxicant tablets of orange color by putting the same in same black polythene bags and putting then and plastic jars in different cloth parcels by sealing the same with his seal bearing marks B.S. Sample of seal was prepared separately and after the use seal was hand over the ASI kulwinder 475/KP. Accused Shiv Kumar s/o Hakam Chand r/o Master colony street no. 9 house no. 611 police station daresi district

Ludhiana and Sanjiv Kapoor S/o Ved parkash r/o B/6, 1167-9 /K, Street No. 21 Harbanspura Police Station division no. 3 district Ludhiana by keeping 1150 intoxicant capsule and 550 intoxicant tablets have committed offences under section 22/61/85 of NDPS Act. The present intimation in writing is being sent for registration of FIR by hand through PHG Sanjeev Kumar 15818 to PS. After registration of FIR number be informed and control room the intimated through wireless and report be sent to hire officials. Present SI along with colleagues is busy in investigation at the spot.'

3. **Contentions**

On behalf of the petitioner

The learned counsel for the petitioner submits that the petitioner has been falsely implicated in the instant case and that the recovery was not made from the conscious possession of the petitioner, but rather from a polythene bag allegedly discarded into the bushes. Additionally, the counsel argues that there is material inconsistency in the dates mentioned in the FIR and the test memo; as the FIR was lodged on 10.08.2023, while the test memo concerning the alleged recovery was prepared on 14.07.2023, which creates doubt on the registration of the FIR. The counsel further argues that the provisions of Section 50 of the Narcotic Drugs and Psychotropic Substances Act have not been adhered to in the present case.

On behalf of the respondent/State

Learned State counsel has filed the custody certificate of the petitioner, which is taken on record. He prays for dismissal of the present petition on the ground that recovery of contraband i.e., 627.9 grams of *Tramadol Hydrochloride*, which was effected from the petitioner is commercial in nature, therefore, the rigorous of Section 37 of Act, 1985 would be attracted.

4. Analysis

Drug addiction is a societal scourge that devastates individuals and communities, while drug trafficking has far-reaching consequences that undermine economies and fuel illicit activities, including terrorism. The use of narcotic drugs destroys lives, eroding an individual's humanity and reducing them to a mere shadow of their former self. As the grip of addiction tightens, users sacrifice their dignity, well-being, and ultimately, their very existence. It is the legislature's imperative to mitigate the harmful effects of drugs and substances on society, and to protect citizens from the ravages of addiction and the illicit drug trade.

It's important to remember that while an accused in a murder case may take the life of one or two individuals, those involved in narcotics trafficking are responsible for causing the deaths of numerous innocent young people who are vulnerable to addiction. The harmful effects of drug trafficking have a devastating impact on society, making those involved a significant threat to public safety. Even if released temporarily, it's likely that they will continue their illegal activities, prioritizing profits over human life and perpetuating a dangerous cycle of addiction and exploitation. In the present prevailing scenario, the drug trafficking, trading and its use has acquired dimensions of an epidemic which not only effects the economic policies of the State but corrupts the system apart from leaving the impact of producing sick society. I will not be shy of saying that anti drug justice is a criminal dimension of social justice as drug addiction forms vitals of the society along-with illicit money generation by drug trafficking.

Moving further with the contention raised by the counsel for the petitioner for not complying with the provisions of Section 50 of the NDPS Act, it is a settled proposition of law that this provision has been included in the statute

with a protective intent against malicious prosecution, especially keeping in view the stringent nature of the penal provisions under the NDPS Act. In absence of this safeguard, it would be difficult to determine whether the contraband was actually seized from the person of the accused or merely planted on his body to be used later on as an evidence against him.

Section 50 of the 1985 Act applies to case of personal search and does not apply to search of bag/briefcase/vehicle or premises as held in *State of Punjab Vs. Baljinder Singh : AIR 2019 (SC) 5298*. Further, in “*State of Himachal Pradesh v Pawan Kumar (2005) 4 SCC 350* ” a three judge Bench of the Apex Court held that the search of an article which was being carried by a person in his hand, or on his shoulder or head, etc., would not attract [Section 50](#). It was held thus:

“In common parlance it would be said that a person is carrying a particular article, specifying the manner in which it was carried like hand, shoulder, back or head, etc. Therefore, it is not possible to include these articles within the ambit of the word “person” occurring in [Section 50](#) of the Act ...After the decision in Baldev Singh, this Court has consistently held that [Section 50](#) would only apply to search of a person and not to any bag, article or container, etc. being carried by him.”

Adverting to the merits of the present case wherein 627.9 grams of Tramadol Hydrochloride, which is commercial in nature has been recovered and custody suffered by the petitioner is very less i.e., 2 months 24 days and trial is moving at a good speed as challan stands presented, charges have been framed and out of total 8 prosecution witnesses, 1 has been examined, this courts finds no reason to enlarge the petitioner on bail at this stage.

In the light of above, considering the huge quantity of the contraband recovered and the manner in which the *modus operandi* is evident, wherein the petitioner is alleged to be actively involved, therefore petition deserves to be dismissed having no merits.

Hence, the same stands dismissed with no order as to costs.

(SANDEEP MOUDGIL)
JUDGE

21.01.2025

Sham

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*