

**HIGH COURT OF PUNJAB AND HARYANA
CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN
Date of decision: 02.04.2024**

CRM-M-5981-2024

PRINCE @ KALAGI ...PETITIONER

VERSUS

STATE OF PUNJAB ...RESPONDENT

Legislation:

Section 439 of the Criminal Procedure Code (Cr.P.C)

Sections 21/61/85 of the Narcotic Drugs and Psychotropic Substances Act,
1985

Section 50 of the NDPS Act

Section 173 of the Cr.P.C

Section 22 of the NDPS Act

Section 37 of the NDPS Act

Subject: Petition under Section 439 Cr.P.C. for grant of regular bail in a case involving possession of commercial quantity of Tramadol Hydrochloride.

Headnotes:

Bail under Section 439 Cr.P.C. – Petition for grant of regular bail – Offences under Sections 21/61/85 of Narcotic Drugs and Psychotropic Substances Act, 1985 – Petitioner found in possession of 950 intoxicating capsules – Allegation of Tramadol Hydrochloride weighing 608 grams – Petitioner contends discrepancies in signature language on notice under Section 50 NDPS Act and FIR – Respondent asserts typographical error – Court refrains from delving into veracity of notice but acknowledges signature mismatch – Petitioner's first-time offender status and concluded investigation considered – Bail granted with stringent conditions. [Paras 1-11]

Interpretation of Notice under Section 50 NDPS Act – Mismatch in language of petitioner's signature – Respondent explains typographical error by investigating officer – Court refrains from adjudicating on notice's authenticity but notes discrepancy – Signature language inconsistency observed. [Paras 4-7]

Grant of Bail – Considerations – Petitioner's incarceration period, first-time offender status, and concluded investigation weighed – Bail granted with stringent conditions to prevent misuse and ensure trial attendance – No expression of opinion on case merits. [Paras 8-11]

Referred Cases:

- Parkash Singh versus State of Punjab (CRA-S No.496-SB of 2005 decided on 03.02.2023).
- Balwinder Singh @ Binder vs. State of Punjab (CRM-M No.22127 of 2011 decided on 26.11.2011).

Representing Advocates:

For Petitioner: Mr. H.S. Dhindsa and Mr. G.S. Gurna.

For Respondent: Mr. Mohit Kapoor, Sr. DAG, Punjab.

PANKAJ JAIN, J. (ORAL)

This petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case F.I.R. No.204 dated 30.06.2023 registered for the offences punishable under Sections 21/61/85 of Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Sadar District Amritsar.

2. Custody Certificate of the petitioner has been filed today in Court. The same is taken on record.
3. As per the case of the prosecution on the basis of *ruqa* received from ASI Jaspal Singh FIR came into being. The information was received w.r.t. arrest of the petitioner who was found to be in possession of 950 loose intoxicating

capsules which as per FSL report has been found to be Tramadol Hydrochloride weighing 608 grams i.e. commercial.

4. Counsel for the petitioner refers to the contents of the FIR which noticed that after IO served upon the petitioner notice under Section 50 of the NDPS Act, the petitioner signed in Punjabi. He contends that the same falsified from the notice appended to police report which shows that the petitioner in fact signed in English. He further submits that the FIR No. as well as the charges for which the petitioner was to be booked were mentioned on the said notice even prior to the time, the petitioner could be searched. The fact that the officials were in knowledge even prior to search and seizure of the contraband, the whole case put-forth by the prosecution is under cloud.

5. Short reply by way of an affidavit of Varinder Singh Khosa, PPS, Assistant Commissioner of Police (North), Amritsar City on behalf of the respondent/State, today in Court, which is taken on record. The explanation offered therein reads as under:

“6. That it is humbly submitted that mentioning of the details of the offence in notice under section 50 of the NDPS Act and the recovery memo in the present case is not fatal to the prosecution in view of the observations of this Hon'ble court in Parkash Singh versus State of Punjab (*CRA-S No.496-SB of 2005 decided on 03.02.2023*) that mere mentioning of the FIR number in the documents ipso facto cannot lead to the conclusion that the same have been prepared at a later stage. Reliance is also placed on Balwinder Singh @ Binder vs. State of Punjab (*CRM-M No.22127 of 2011 decided on 26.11.2011*), wherein this Hon'ble court has held that mentioning of FIR on the space left blank in the consent memos is not unusual and no benefit can be given to the accused on that account.

7. That it humbly submitted that the deponent has obtained an explanation from the investigating officer of the present case namely ASI Jaspal No. 49/ASR, with regard to the facts mentioned in the 'Ruqa' that the petitioner has signed on the Notice dated 30.06.2023 under section 50 NDPS Act in Punjabi, whereas the his signature on the aforesaid Notice dated 30.06.2023 under section 50 NDPS Act are in English. The investigating officer has explained to the deponent by appearing personally before him that in fact, the petitioner has signed on the aforesaid notice dated 30.06.2023 under section 50 NDPS Act

in English but it got wrongly mentioned from him due to bona-fide typographical while preparing the Ruqa' in question that the petitioner has signed the notice dated 30.06.2023 under section 50 NDPS Act in Punjabi. Hence, the aforesaid facts relating to the difference of language in which the petitioner has signed on the aforesaid notice dated 30.06.2023 under section 50 NDPS Act, are on account of purely bona-fide typographical mistake committed by the investigating officer while preparing the 'Ruqa' in question. It is not out of place to mention here that the petitioner has not denied in his bail petition that he has not signed the aforesaid notice dated 30.06.2023 under section 50 NDPS Act and as such, the petitioner has not suffered from any prejudice due to the aforesaid bona-fide typographical mistake committed by the investigating officer. 8. That on the completion of the investigation of the case, an Investigation Report/Challan under section 173 Cr.P.C has been submitted in the court of learned Judge, Special Court, Amritsar on 16.09.2023 against the petitioner. A total of 11 prosecution witnesses were cited in the aforesaid investigation report/Challan. The learned Judge, Special Court, Amritsar had framed Charges under section 22 of the NDPS Act against the petitioner vide order dated 02.12.2023, to which he pleaded not guilty and claimed trial. So far, no prosecution witness has been examined by the learned trial court. Now the next date of hearing is fixed on 13.05.2024 for the prosecution evidence.

9. That the petitioner is not entitled to concession of regular bail in view of gravity of the offence committed by him and bar of section 37 of the NDPS Act as intoxicating capsules recovered from the petitioner containing salt 'Tramadol Hydrochloride' falls within the ambit of commercial quantity. There is a strong apprehension that he can misuse the concession of regular bail by absconding from the trial after his release on a regular bail.

10. That as per the record and information available at Police Station Sadar, Amritsar City, the petitioner is not found involved/nominated as accused in any other criminal case, nor declared proclaimed offender in the present case.”

6. I have heard counsel for the parties and have gone through records of the case.

7. In the considered opinion of this Court, it will not be appropriate to go into the veracity of notice under Section 50 of the NDPS Act on the ground that the FIR No. has been mentioned thereon. However, the mismatch in the contents of the FIR and notice under Section 50 regarding signatures of the petitioner is evident.

8. Without commenting on the merits of the case, keeping in view the incarceration already suffered by the petitioner and the fact that he is the first time offender and the investigation stands concluded, the present petition is allowed. The petitioner is ordered to be released on bail on his furnishing bail bonds/surety bonds to the satisfaction of the Trial Court/Duty Magistrate concerned.

9. However, in addition to conditions that may be imposed by the Trial Court/Duty Magistrate concerned, the petitioner shall remain bound by the following conditions :-

- (i) The petitioner shall not mis-use the liberty granted.
- (ii) The petitioner shall not tamper with any evidence oral or documentary during the trial.
- (iii) The petitioner shall not absent himself on any date before the trial.
- (iv) The petitioner shall not commit any offence while on bail.
- (v) The petitioner shall deposit his passport, if any with the trial Court.
- (vi) The petitioner shall give his cellphone number to the police authorities and shall not change his cellphone number without permission of the trial Court.
- (vii) The petitioner shall not in any manner try to delay the trial.

10. In case of breach of any of the aforesaid conditions and those which may be imposed by the Trial Court, the prosecution shall be at liberty to move cancellation of bail of the petitioner.

11. Needless to say that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

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