

**IN THE COURT OF SANDEEP KUMAR SINGLA,
JUDGE SPECIAL COURT, SAS NAGAR(MOHALI).**

CNR No.PBSA01-006814-2021

Date of Order: 22.09.2021

Harsh Wadhwa alias Maoo son of Bishamber Dass aged 24 years resident of H.No. 28 Street No.24, Jalandhar Cantt, Punjab.

. ..Applicant/accused

Versus

State of Punjab

... Respondent.

FIR No.119 dated 14.07.2021,
Under Section 22 of NDPS Act.
Police Station :- Lalru.

Application under Section 439 Cr.P.C.

Present : Sh. Ankur Choudhrie, Advocate, counsel for applicant/accused.
Sh.Rakesh Goyal, Public Prosecutor for State.

ORDER.

1. Present bail application has been filed under Section 439 Cr.P.C on behalf of accused-applicant for grant of regular bail in the aforesaid FIR.

2. It is pleaded that the applicant has been falsely implicated in the present case. The applicant was neither arrested from the spot nor is having any concern with the persons from whom alleged recovery has been effected. The recovery has already been effected from the main accused and the applicant was lateron nominated on the disclosure statement made by the accused. The applicant has no concern with the

main accused. The applicant is ready to furnish bonds and undertakes to abide by all the terms and conditions to be imposed. Hence the bail application.

3. Upon notice, the learned Public Prosecutor put in appearance and opposed the bail application without filing any reply.

4. The brief facts of the prosecution case in nut shell are that on 14.07.2021, the police party headed by ASI Gaurav Sharma in connection with patrolling and checking of bad elements was present in the area of bus stop Sarsini and was checking the vehicles. At about 6:15 p.m. two mulla fashion persons came from Ambala side who were carrying back bag, on seeing the police party they become nervous and tried to turn back. On suspicion, they were apprehended and their antecedents were enquired. One person disclosed his name as Ashok Kumar and other disclosed his name as Kala Ram both residents of Bhargo Camp Jalandhar. On enquiry, they could not give any satisfactory answer about the material kept in their bags and thereafter investigating officer namely Sulakhan Singh was called from the police station who came at the spot and after completing all the formalities also called DSP Gurbakshish Singh who also visited the spot and thereafter the search of the back bags of the suspects was conducted under rules. The search of bag carried by Ashok Kumar led to recovery of 4500 tablets of TRAMADOL HYDROCHLORIDE, whereas, from the bag carried by Kala Ram, 3520

capsules of Dicylomine HCI Tramadol were recovered. They could not produce any permit or licence, as such, they were arrested in the present case. During investigation, accused Ashok Kumar made disclosure statement as a result of which, accused Harsh Wadhwa and Suraj were nominated in this case. Accused Harsh Wadhwa also made disclosure statement and on the basis thereof accused Mohammad Sajid was nominated and thereafter accused Munish Mohan was nominated in this case. However, nothing was recovered from accused Harsh Wadhwa, whereas, recovery of 10800 tablets of Diphenoxylate Hydrochloride and Astropine Sulphate tablets IP Lomotil and 1700 tablets of Tramadol Hydrochloride and 7200 tablets of Alprazolam (Total 19,700 tablets) was effected from accused Mohammad Sajid.

5. I have heard learned counsel for accused/applicant, learned P.P for the State and have carefully perused the record with their able assistance.

6. Learned counsel for the applicant argued that the applicant is neither named in the F.I.R. nor he was arrested at the spot. He further argued that the applicant has been nominated in the present case on the basis of disclosure statement made by the main accused Ashok Kumar. Nothing was recovered from the applicant. He is in custody for the last about two months. The call and tower location of the mobile of the applicant shows that he was not present at the spot, as such, he should be

released on regular bail. The learned PP on other hand argued that recovery of commercial quantity of Tramadol Hydrochloride and Dicylamine HCl Tramadol has been effected from the main accused Ashok Kumar and Kala Ram and the applicant has been nominated on the basis of disclosure statement of Ashok Kumar and link between the accused with applicant through call details has also been established, as such, he should not be granted regular bail. The recovery of contraband was effected from the conscious possession of the co-accused and co-accused Ashok Kumar has specifically stated in his statement that he alongwith Kala Ram had been supplying the contraband to Mani alias Mao and Suraj and thereafter they sell the same in the area of Jalandhar and out of earned profit, they equally divided the same and further Mani also gave them Rs.5000/- per visit. The learned counsel for the applicant has relied upon **Haricharan Khurmi Vs. State of Bihar 1964 AIR(SC) 1184** wherein the Hon'ble High Court in the facts and circumstances of the case has allowed the bail application. However, the applicant has been named under Section 29 of NDPS Act and recovery from co-accused falls under commercial quantity. Therefore, the applicant Harsh Wadhwa is equally liable. Further in view of specific allegations against the applicant that he requisitioned the contraband through main accused and sells the same and bar contained under Section 37 of the NDPS Act, applicant/accused is not entitled to grant of bail. Accordingly, without

commenting further on merits of the case, I hereby dismiss this bail application. The observations made above would have no bearing on the merits of the case. Bail file be attached with the remand papers, if pending before this Court, otherwise consigned to the record room.

Pronounced
Dated:-22.09.2021

Balwinder Singh, Stenographer Gr.I

(Sandeep Kumar Singla)
Judge, Special Court
SAS Nagar (Mohali)

Harsh Wadhwa vs. State

Present : Sh. Ankur Chaudhrie Advocate, counsel for applicant.
Sh.Rakesh Goyal P.P.for State.

Record received. Arguments heard. Vide my separate detailed order of even date, the present bail application stands dismissed. Bail file be attached with the remand papers, if pending before this Court, otherwise consigned to the record room.

Pronounced
22.09.2021

(Sandeep Kumar Singla)
Judge, Special Court
SAS Nagar (Mohali)

Balwinder Singh, Stenographer Gr.I

