

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

CRM-M No.42896 of 2015

Date of Decision:-06.05.2016

Sanjay Gupta.

.....Petitioner.

Versus

State of Punjab.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. Jasdev Singh Mehndiratta, Advocate for the Petitioner.

Mr. Kirat Singh Sidhu, Deputy Advocate General, Punjab
assisted by ASI Avtar Singh.

JASWANT SINGH, J (ORAL)

Prayer is under Section 439 Cr.PC for grant of regular bail to the petitioner-Sanjay Gupta in case FIR No.42 dated 20.03.2015 for offences punishable under Sections 22 (61/85) of Narcotic Drugs and Psychotropic Substance Act, 1985 registered with Police Station Samana, District Patiala.

As per allegations the police party apprehended the petitioner on 20.03.2015 and effected a recovery of 2000 intoxicating tablets from the secret pocket of his trousers.

The aforesaid tablets contained Diphenoxylate Hydrochloride and as per the FSL report, the quantity is commercial in nature.

The primary contentions of the petitioner are noticed in the order dated 21.01.2016 which reads as under:-

- (i) *that the alleged recovery of 2000 tablets from the secret pocket of the trouser of the petitioner is not possible;*
- (ii) *that the sample drawn at the time of arrest and recovery was sealed bearing the impressions “AS” and “GS” by the IO/ASI Avtar Singh and ASI Gurbachan Singh, which was never sent for Chemical analysis.”*

In the reply filed by way of affidavit dated 29.02.2016 of DSP Sukhdev Singh it is not controverted that Jagdeep Singh, Constable-PW-2 is the one, who has taken the samples marked as “AS” and “GS” from the malkhana to forensic laboratory. However, there is no explanation to his contrary testimony that the samples taken by him to the FSL for examination were the ones which were drawn up by the *Munshi* in front of him in the police station.

It is thus contended that the whole case of the prosecution qua the recovery being a Narcotic would fall to the ground. It is further contended that petitioner is not involved in any other case.

Learned State Counsel assisted by ASI Avtar Singh submits that as per the FSL report the seals of the samples marked as “AS” and “GS” were found intact, however, the aforesaid position as per the affidavit is not denied. He further submits that 08 out of 11 Pws have since been examined.

Without commenting on the merits of the case, keeping in view the above, it is apparent that the case would fall under the exception clause of the Bar under Section 37 of the NDPS Act and, therefore, the petitioner is

entitled to be released on bail.

Accordingly, present petition is allowed and the petitioner Sanjay Gupta is ordered to be released on bail to the satisfaction of learned CJM/Duty Magistrate, Patiala.

Petition stands disposed of.

**(JASWANT SINGH)
JUDGE**

May 06, 2016
Vinay