

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CRM-M-13842 of 2017
Date of Decision: 10.11.2017

Navjot Singh

....Petitioner

VERSUS

State of Punjab

....Respondent

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. P.S. Sekhon, Advocate
for the petitioner.

Mr. C.L. Pawar, Sr. D.A.G., Punjab

SURINDER GUPTA, J.(Oral)

The present petition has been filed under Section 439 Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No.55 dated 11.06.2016 registered for the offence punishable under Section 22 of Narcotics Drugs and Psychotropic Substances Act, 1985 at Police Station City-I Mansa, District Mansa.

Heard.

Learned counsel for the petitioner argues that as per case of prosecution 40 bottles of Corex syrup were recovered from possession of the petitioner-Navjot Singh and his co-accused, namely, Balwant Singh. Out of those 40 bottles, one bottle was taken as sample and sent to FSL for examination, where contents of bottle were found to be Codeine Phosphate. There is nothing in the recovery memo or order passed by learned Magistrate, when the case property was produced before him, as to what was the batch number of these bottles. The possibility that bottles were of different batches or without batch numbers, cannot be ruled out. The onus is

on the prosecution to prove that sample drawn in this case was representative sample.

Learned State counsel submits that one bottle of Corex syrup was taken randomly by learned Magistrate. He, however, could not rebut the submission of learned counsel for the petitioner that batch number, name of manufacturer, date of manufacturing, date of expiry are neither mentioned in the recovery memo nor in the order passed by learned Magistrate.

The quantity of Corex syrup recovered from the petitioner, if take as contraband in entirety, is commercial quantity. However, onus will lie on the prosecution to prove that sample drawn was a representative sample. In reply, prosecution has taken the plea that the entire remaining case property is lying in *malkhana* and accused, if so desire, can get the salt of remaining quantity checked. This plea of prosecution is not tenable at this stage as onus is on the prosecution to prove its case and not on the accused to dispel the same. As to whether sample drawn in this case was a representative sample and proves recovery of commercial quantity of contraband from the petitioner, is a fact to be seen by the trial Court. However, keeping in view the fact that recovery memo and order passed by learned Magistrate nowhere describe the name of manufacturer, date of manufacturing, batch number etc. on the bottles, I find it to be a fit case to extend the benefit of regular bail to petitioner.

Without expressing any opinion on merits of the case and keeping in view the fact that conclusion of trial will take considerably long time, the present petition is allowed. Petitioner-Navjot Singh is ordered to be released on regular bail on furnishing bail bond and surety bond to the satisfaction of concerned trial Court/Chief Judicial Magistrate/Duty

Magistrate, subject to following terms:-

- (a) The petitioner shall comply with the conditions mentioned in Section 437(3) Cr.P.C.
- (b) In the event of his absence on any date of hearing, the benefit of bail allowed to the petitioner shall stand withdrawn. The trial Court shall be competent to cancel his bail bond and surety bond and proceed to procure his presence in accordance with law. In that eventuality the petitioner shall have to apply for bail afresh.
- (c) He shall not leave the country without the previous permission of the Court.

November 10, 2017
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No