

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

**Crl. Misc. No.M-15925 of 2017 (O&M)
Date of Decision: December 07, 2017.**

Devendra Kumar Sharma

.....PETITIONER(s).

VERSUS

Central Bureau of Narcotics, Amritsar

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Karanjit Singh, Advocate
for the petitioner (s).

Mr. C.L. Pawat, 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 complaint case bearing Crime No.2 dated 17.09.2016 titled as “Central Bureau of Narcotics Vs. Sonu and others” for offences punishable under Sections 8, 22, 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short-NDPS Act) at CBN, Amritsar, pending in the Court of Sessions Judge, Amritsar.

Heard.

Vipin Gupta, Inspector, Central Bureau of Narcotics, Amritsar received a secret information on 17.09.2016 that Sonu will purchase 500 tablets of Alprazolam from Dashmesh Medicos situated in front of Guru Nanak Devi Hospital, Majitha Road, Amritsar and if a vigil is kept, he can

be apprehended. Acting on the information, a team under the leadership of Superintendent Sushil Kumar Verma of Central Bureau of Narcotics was formed, which went to the spot to keep a vigil. Sonu came to the shop of Dashmesh Medicos and purchased some medicines (wrapped in newspaper). He was apprehended and after complying the provisions of Section 50 of NDPS Act, his search was conducted and 500 tablets of Alprazolam were recovered out of which 400 tables were of brand Alpracad and 100 tablets of brand Alpax. Petitioner Devendra Kumar was salesman on Dashmesh Medicos. On apprehension, he apprised the officers of Narcotic Bureau that tablets of Alprazolam were sold by him under the permission and consent of Harinder Singh, owner of the shop for a sum of ₹3000/- without bills. Petitioner was arrested on 17.09.2016.

Learned counsel for the petitioner Devindra Kumar has argued that petitioner was a salesman and was performing his duty in the shop of Harinder Singh under his directions. Sonu in his statement under Section 67 Cr.P.C. recorded by Inspector Davinder Singh of Central Bureau of Narcotics, has stated that he purchased these medicines from Dashmesh Medicos and earlier also he had been purchasing Alprazolam tablets from owner of the shop i.e. Harinder Singh @ Happy. Statement of Devendra Kumar petitioner was recorded under Section 67 Cr.P.C. in which he has categorically stated that he had given medicines i.e. tablets of Alprazolam to Sonu on the direction of Harinder Singh. Being a salesman, petitioner was not in a position to know as to whether a particular medicine falls within the category of narcotics. Even otherwise, the allegation of sale of narcotics is against Dashmesh Medicos and not against the salesman employed by the

proprietor of the shop.

Learned counsel for Central Bureau of Narcotics has argued that Devendra Kumar petitioner was salesman and had given 500 tablets of Alrazolam to Sonu without bill which amounts to sale of narcotics by him which is offence under Section 22 of NDPS Act.

Admittedly, Devendra Kumar petitioner was a salesman on the shop of Dashmesh Medicos. As per the prosecuting agency, he was acting under the direction of the owner of the shop. It will be matter of consideration before the trial Court as to whether handing over of tablets of Alprazolam by Devendra Kumar salesman under the direction of proprietor of the shop falls within the definition of sale by salesman or it is a sale of contraband by the owner of the shop. Investigating agency has not verified the educational qualification of Devendra Kumar or that he was even aware of the contents of the drugs which was manufacture branded medicine being given to the customers on the asking of the owner.

Keeping in view the above facts and period of incarceration of petitioner but without expressing any opinion on merits of the case, the present petition is allowed. Petitioner Devendra Kumar Sharma 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 prior permission of the Court.

(SURINDER GUPTA)
JUDGE

December 07, 2017
Sachin M.

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***