

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

**Crl. Misc. No.M-24854 of 2017 (O&M)
Date of Decision: October 25, 2017.**

Ajay Kumar @ Ajay

.....PETITIONER(s).

VERSUS

State of Punjab

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Sandeep Arora, Advocate
for the petitioner (s).

Mr. V.G. Jauhar, 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.161 dated 23.10.2015 registered for the offence punishable under Section 22 of Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Bhargo Camp, Jalandhar.

Heard.

As per case of the prosecution, petitioner was arrested on 23.10.2015 on the basis of suspicion and 110 grams of intoxicant powder, which was found to be that of Alprazolam, was recovered from his possession.

Learned counsel for the petitioner has argued that as per version of the prosecution, intoxicating powder was kept in a glazed PAPER envelop. Investigating Officer arranged the weighing scale for

weighment of the intoxicating powder and found it to be 110 grams. It appears that the weight of the contraband was done along with envelop and the type of weighing scale used has not been disclosed. The petitioner has every right to prove before the trial Court that the quantity recovered from him does not fall within the category of commercial quantity as it was weighed along with envelop and the type of weighing scale has not been disclosed.

Learned State counsel submits that the contraband was weighed by arranging a weighing scale at the spot. However, the type of weighing scale used has not been mentioned in the police file. He further submits that it is not clear from the recovery memo whether contraband was weighed along with glazed paper envelop.

I find merit in submission of learned counsel for the petitioner. Quantity above 100 grams of Alprazolam fall in commercial quantity. In this case, recovery from petitioner of contraband weighing 110 grams has been shown, from which weight of envelop has not been excluded. Before trial Court, the petitioner can represent and prove that the recovery of contraband from him was less than commercial quantity.

In view of the above facts but without expressing any opinion on merits of the case, the present petition is allowed. Petitioner Ajay Kumar alias Ajay is ordered to be released on regular bail on furnishing bail bond and surety bond to the satisfaction of concerned 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

October 25, 2017

Sachin M.

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

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