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

**CRM-M No.4375 of 2017
Date of Decision: 03.04.2017**

NIRMAL KUMAR @ MINDI

.....Petitioner

Vs

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. R.P. Dhir, Advocate
for the petitioner.

Ms. Rimplejeet Kaur, A.A.G., Punjab.

RAJ MOHAN SINGH, J.(Oral)

Petitioner seeks grant of regular bail under Section 439 Cr.P.C in case bearing FIR No.120 dated 03.08.2016 registered under Section 21/61/85 of the NDPS Act at Police Station Goraya District Jalandhar.

250 grams of intoxicating power was allegedly recovered from the petitioner. As per the FIR there is no mention about taking of sample at the spot.

Learned State counsel on instructions from ASI Jagtar Singh stated that the sampling was done in the presence of Magistrate at a subsequent stage to which an order was also

passed by the Judicial Magistrate Ist Class on 03.08.2016.

Learned counsel for the petitioner contended that Form No.29 prepared at the time of sampling shows that seals of JS and HS were affixed at two places, but the Magistrate while passing the order dated 03.08.2016 has not adverted to any such affixation of seal by him. Whereas as per FSL report the sample was received under the seal of the Magistrate.

On chemical analysis, the alleged contraband was found to be Alprazolam which is covered under column No.30 of the Schedule appended to NDPS Act 1985, but in view of recommendations of Review Committee Alphazolam is also covered under Schedule (H) of Drug and Cosmetics Act, 1940.

In view of observations made by this Court in **Parveen @ Dunga vs. State of Punjab, 2014 (33) RCR (Criminal) 46, CRM-M No.6108 of 2017** titled "**Punjab Singh @ Punjab vs. State of Punjab**" and **CRM-M No.41559 of 2016** titled "**Balwinder Singh @ Laddi vs. State of Punjab**", the issue is debatable as to the applicability of both the Acts.

Learned State counsel informed the Court that the petitioner is also involved in number of cases to which learned counsel for the petitioner took strong objection and contended that the petitioner is on bail in other cases.

Be that as it may, at this stage, without adverting to the

merits of the case, I am of the view that petitioner, who is in custody since 02.08.2016 can be enlarged on bail.

In view of above, petition is allowed. Petitioner is ordered to be enlarged on regular bail, subject to his furnishing adequate bail bonds/surety bonds to the satisfaction of the trial Court.

Nothing expressed hereinabove would be construed to be an expression of any opinion on merits of the case.

April 03, 2017.

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No