

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

**Crl. Misc. No.M-8426 of 2017 (O&M)
Date of Decision: August 16, 2017.**

Chamkaur Singh

.....PETITIONER(s).

VERSUS

State of Punjab

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

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

Ms. Rajni Gupta, Sr. DAG, Punjab.

SURINDER GUPTA, J.(Oral)

CRM-25429-2017

Application is for placing on record Annexures A/1 to A/3.

The same are taken on record subject to all just exceptions.

Application stands disposed of accordingly.

CRM-M-8426-2017

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. 97 dated 13.10.2016 registered for the offences punishable under Sections 22 of Narcotics Drugs and Psychotropic Substances Act, 1985 (for short-NDPS Act), at Police Station Bareta, District Mansa.

As per case of prosecution, 35 bottles of Rexcof (60 ml. Each) were recovered from the petitioner, out of which one bottle was taken as sample and sent to Forensic Science Laboratory and the same was found to

be that of '*Codeine Phosphate*'.

Learned counsel for the petitioner submits that the sample drawn in this case, cannot be said to be a representative sample as neither in the recovery memo nor in the report of Forensic Science Laboratory, the batch number, name of manufacturer, date of manufacturing and other details of the sample find mention. This fact is also not mentioned anywhere as to what was the batch number of remaining 34 bottle and whether those bottles were containing material similar to contents of sample bottle.

The State, in its reply filed by way of affidavit of Manvinder Bir Singh, Deputy Superintendent of Police, Sub Division Budhlada, has admitted the above submission of learned counsel for the petitioner in para 2 and 3, which reads as follows:-

“2. That as per the FIR No.97 dated 13.10.2016 under Sec.22, 61, 85 of NDPS Act PS Bareta and **recovery memo, no description of manufacturer, date of manufacturing, batch number of any other detail of the recovered substance has been recorded.** However, the substance was produced before the Id. Special Judge and the sealed substance is lying in sealed condition in Malkhana. The copy of the recovery memo is Annexure R-1/T.

3. That two parcels of samples drawn from the recovered substance were sent to the Regional Testing Forensic Science Laboratory, Bathinda and the Report dated 28.10.2016 had been submitted by the said Laboratory **but there is no description of manufacturer, date of manufacturing, batch number of any other detail of the samples.** The copy of the

Testing report dated 28.10.2016 is Annexure R-2.”

In view of the above facts, the point for determination before the trial Court will be as to whether the recovery effected from the petitioner fall within the scope of commercial quantity or non-commercial quantity and whether the prosecution has been successful in proving that all the 35 bottles recovered from the petitioner contained contraband '*Codeine Phosphate*'. It will also be a matter for consideration as to whether report of chemical examiner (FSL report) in the absence of any details regarding batch number, date of manufacturing or any other relevant particulars, can be taken as report of a representative sample of entire quantity recovered from petitioner.

Keeping in view the above peculiar facts, I find no reason to keep the petitioner under detention merely because Section 37 of NDPS Act bars the grant of bail in case of recovery of commercial quantity of contraband. As to whether commercial quantity of contraband was recovered from the petitioner is a question which the trial Court will determine on the strength of evidence produced before it. At this stage, this question cannot be answered in favour of prosecution. Consequently, petitioner Chamkaur Singh is ordered to be released on regular bail on furnishing bail bond and surety bond to the satisfaction of Chief Judicial Magistrate/Duty Magistrate, Mansa 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.

It is, however, made clear that nothing observed hereinabove shall be deemed as opinion on merit or shall effect the finding of trial Court at the time of final disposal of the case.

Disposed of accordingly.

(SURINDER GUPTA)
JUDGE

August 16, 2017
Sachin M.

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

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