

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

CRM-M-12227-2018

Date of decision: - 18.04.2018

Sunny @ Sahil

.....Petitioner

Versus

State of U.T., Chandigarh

.....Respondent

CORAM : HON'BLE MR.JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Chanchal K. Singla, Advocate
for the petitioner.

Mr. Gautam Dutt, Addl. PP, U.T., Chandigarh.

MAHABIR SINGH SINDHU, J. (ORAL)

Present petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No.381 dated 07.10.2017, under Section 22 of The Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act'), registered at Police Station South, Sector 34, Chandigarh.

2. It is contended by learned counsel that the petitioner has been falsely implicated in this case by the police as the recovered substances are not covered under the NDPS Act and thus, no offence is made out against him. It is further contended that the petitioner is in custody since 07.10.2017 and he is entitled to the concession of regular bail.

3. On the other hand, learned State counsel has stated that the commercial quantity of the contraband were recovered from the petitioner and he is not entitled to concession of bail.

4. Heard learned counsel for the parties and perused the record.

5. Precisely, the accusation against the petitioner is that on 07.10.2017, a police party headed by SI Jaiveer Singh was present nearby Gurdwara Chowk, Sector 32, Chandigarh and patrolling in that area. In the meantime, petitioner-accused came from the side of GMCH, Sector 32, Chandigarh, while holding a carry bag in his right hand and on seeing the police party, he changed the side and started walking briskly. On the basis of suspicion, the petitioner was apprehended. After completing all the statutory formalities, bag of the accused was searched and during search, 17 injections of Phenirmaine Malete and 17 injections of Buprenorphine were recovered from his possession. After following the due procedure, the samples were stated to have been separately sealed and taken into possession.

6. As discussed above, the commercial quantity of drugs and psychotropic substances in question were recovered from the possession of the petitioner, fully attracts the bar to grant bail, as contemplated under Section 37 of the NDPS Act.

7. Hon'ble Supreme Court in case of **Union of India and another Vs. Sanjeev V. Deshpande, 2014(4) RCR CrI. 75**, has held as under:-

“34. On the above analysis of the provisions of chapters VI and VII of the 1985 Rules, we are of the opinion, both these Chapters contain Rules permitting and regulating the import and

export of narcotic drugs and psychotropic substances other than those specified in the Schedule-I to the 1985 Rules subject to various conditions and procedure stipulated in Chapter VI. Whereas Chapter VII deals exclusively with various other aspects of DEALING IN psychotropic substances and the conditions subject to which such DEALING IN is permitted. We are of the opinion that both Rules 53 and 64 are really in the nature of exception to the general scheme of Chapters VI and VII respectively containing a list of narcotic drugs and psychotropic substances which cannot be dealt in any manner notwithstanding the other provisions of these two chapters. We are of the clear opinion that neither Rule 53 nor Rule 64 is a source of authority for prohibiting the DEALING IN narcotic drugs and psychotropic substances, the source is Section 8. *Rajesh Kumar Gupta's* case in our view is wrongly decided.

35. In view of our conclusion, the complete analysis of the implications of Section 80 of the Act is not really called for in the instant case. It is only required to be stated that essentially the Drugs & Cosmetics Act, 1940 deals with various operations of manufacture, sale, purchase etc. of drugs generally whereas Narcotic Drugs and Psychotropic Substances Act, 1985 deals with a more specific class of drugs and, therefore, a special law on the subject. Further the provisions of the Act operate in addition to the provisions of 1940 Act.”

8. In view of the above, this Court does not find any merit in the present petition, hence, the same is hereby dismissed.

9. However, learned trial Court is requested to expedite the trial.

10. The above observations may not be construed as an expression of opinion on merits of the case.

(MAHABIR SINGH SINDHU)
JUDGE

April 18, 2018
naresh.k

Whether reportable?	Yes
Whether reasoned/speaking?	Yes