

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

**Criminal Misc. No. M-14641 of 2018
Date of decision: 09.10.2018**

Rajinder

..Petitioner

Versus

State of Punjab

..Respondent

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. Gourav Goel, Advocate
for the petitioner.

Mr. C.L. Pawar, Sr. DAG, Punjab
for the respondent -State.

Daya Chaudhary, J.

This petition has been filed by petitioner-Rajinder under Section 439 Cr.P.C. for grant of regular bail in case FIR No.84 dated 15.04.2017 registered under Sections 22/61/85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Dakha, District Ludhiana.

Learned counsel for the petitioner submits that the petitioner has falsely been implicated in the case whereas he was not involved in commission of offence. After presentation of challan, charges have been framed and case is fixed for recording of statement of prosecution witnesses. Learned counsel further submits that 150 gms intoxicating powder was recovered from the petitioner and as per Chemical Examiner's report, it was found 0.17% Alprazolam, which does not fall under the NDPS Act. Learned counsel also submits that initially, the petitioner was released

on interim bail till the presentation of Chemical Examiner's report. After presentation of Chemical Examiner's report, the petitioner was sent to judicial custody on 05.09.2017. Learned counsel also submits that the bail application filed by the petitioner has been dismissed on the ground that the alleged recovery is commercial in nature and the petitioner is not entitled for regular bail. Learned counsel also submits that under the similar circumstances, accused, namely, Raja Singh, Prempal singh and Paramjit Singh @ Kala were released on regular bail by this Court in Criminal Misc. Nos. M-33128 of 2017, 26869 of 2018 and 17717 of 2018, respectively. Learned counsel for the petitioner has also relied upon orders passed by this Court in *Jasbir Singh vs. State of Punjab, 2014(1) RCR (Criminal) 179*, *Balwinder Kaur @ Bindi vs. State of Punjab, Criminal Misc. No. M-16505 of 2017 decided on 24.05.2017*, *Rachhpal Singh @ Goldi vs. State of Punjab, Criminal Misc. No. M-34998 of 2016 decided on 15.02.2017* and *Parveen Singh @ Dunga vs. State of Punjab, Criminal Misc. No. M-920 of 2014 decided on 11.03.2014*.

Learned State counsel has not disputed the custody period as well as the alleged recovery.

Heard arguments of learned counsel for the petitioner as well as learned State counsel and have also perused the contents of the FIR and other documents available on the file.

The petitioner is accused of an offence punishable under Section 22 of the NDPS Act. The alleged recovery is 150 gms of Alprazolam which is covered as per Serial No.30 of the Schedule appended to the NDPS Act. The same is also covered under Schedule (H) of the Drugs

and Cosmetics Act, 1940, as per recommendations of the Review Committee.

In view of judgments rendered by this Court in *Rachhpal Singh @ Goldi's case (supra)* and *Parveen @ Dunga vs. State of Punjab, 2014 (33) RCR (Criminal) 46*, the issue is debatable as to the applicability of both the Acts.

Accordingly, by considering the ratio of aforesaid judgment/order and the fact that the petitioner is in custody since 05.09.2017 and also the fact that all the witnesses are official witnesses and there is no possibility that the petitioner may influence the witnesses or tamper with the evidence, the present petition is allowed and petitioner, namely, Rajinder is directed to be released on regular bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court.

09.10.2018
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	No