

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

CRM-M-22034 of 2017

Date of decision: May 29, 2018

Harinder Singh @ Happy

.....PETITIONER(s).

VERSUS

Central Bureau of Narcotics

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. H.S. Rakhra, Advocate
for the petitioner (s).

Mr. D.D. Sharma, Advocate
for Central Bureau of Narcotic.

Ms. Monika Jalota, 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 Crime No.02 dated 17.09.2016 registered for the offences punishable under Sections 8, 22 and 29 of Narcotic Drugs & Psychotropic Substances Act (hereinafter referred to as 'the Act') at CBN Amritsar in Complaint no.37 of 9.3.2017.

Heard.

Learned counsel for respondent submits that the respondent has verified the licence of petitioner under which he was authorized to store and sell Alprazolam. However, the petitioner has neither maintained the record of stock nor produced the bills for purchase of Alprazolam. He has also sold Alprazolam to one Sonu without bill.

The petitioner was arrested in this case on 28.3.2017. He is chemist and as per submissions of learned counsel for respondent he is having valid licence for possession and sale of Alprazolam. Now the question is as to whether the sale of Alprazolam without bill constitute an offence punishable under Section 29 of the Act.

Section 29 of the Act reads as follows :-

“29. Punishment for abetment and criminal conspiracy – (1)
Whoever abets, or is a party to a criminal conspiracy to commit an offence punishable under this Chapter, shall whether such offence be or be not committed in consequence of such abetment or in pursuance of such criminal conspiracy, and notwithstanding anything anything contained in section 116 of the Indian Penal Code (45 of 1860), be punishable with the punishable provided for the offence.

(2) A person abets, or is a party to a criminal conspiracy to commit, an offence, within the meaning of this Section, who, in India, abets or is a party to the criminal conspiracy to the commission of any act in a place without and beyond India which --

(a) would constitute an offence if committed within India; or

(b) under the laws of such place, is an offence relating to the narcotic drugs or psychotropic substances having all the legal conditions required to constitute it such an offence the same as or analogous to the legal conditions required to constitute it an offence punishable under this Chapter, if committed within India.

Learned counsel for respondent has argued that petitioner was selling the Alprazolam medicine without bill and has abetted commission of

himself liable for offence punishable under Section 29 of the Act. The question of abetment/conspiracy is to be seen by the trial court on the basis of the evidence produced before it. The provisions of Section 37 of the Act are not applicable while considering the grant of bail for offence punishable under Section 29 of the Act.

In view of the above but without expressing any opinion on merits of the case, the present petition is allowed. Petitioner-Harinder Singh @ Happy 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.

May 29, 2018
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(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No