

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

**Criminal Misc. No. M-23028 of 2018
Date of decision: 06.09.2018**

Azam Khan @ Shallu

..Petitioner

Versus

State of Punjab

..Respondent

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. S.P.S. Sidhu, Advocate
for the petitioner.

Mr. Amit Mehta, Sr. DAG, Punjab
for the respondent -State.

Daya Chaudhary, J.

Petitioner-Azam Khan @ Shallu has approached this Court by way of filing the present petition under Section 439 Cr.P.C. for grant of regular bail to him in case FIR No.120 dated 06.05.2017 registered under Section 22/61/85 of the Narcotic Drugs and Psychotropic Substances Act, 1985, at Police Station Tripri, Patiala, District Patiala.

Learned counsel for the petitioner submits that the petitioner has falsely been implicated in the case whereas he was picked up from Meerut and no recovery was effected from him. As per allegations levelled in the FIR, intoxicated capsules of green colour kept in plastic carry bag, white colour intoxicated tablets in plastic carry bag and intoxicated tablets of peach colour in plastic carry bag as well as glass vials of brown colour on which Pheniramine Maleate injection IP Avil was written in one plastic carry bag were recovered. From other black colour plastic bag

Buprenorphine injections were recovered from the car of the petitioner at Patiala. Learned counsel further submits that it is clear from the call details of mobile that the petitioner was not present at the place of occurrence. Learned counsel also submits that the trial Court has also verified the location of various mobile numbers and the tower location of the petitioner which was not of the place of occurrence. The alleged recovery is of manufactured drugs, which were manufactured by known companies and no case is made out under the NDPS Act. At the most, it can be a case under the Drugs and Cosmetics Act. At the end, learned counsel for the petitioner submits that the petitioner is in custody since the registration of the FIR i.e., 06.05.2017 and no other case is pending against him. The trial may take long time to conclude and no purpose would be served by keeping the petitioner behind the bars. All the witnesses are official witnesses and there is no possibility that the petitioner may influence the witnesses or tamper with the evidence.

Learned State counsel has not disputed the custody period and also the fact that no other case is pending against the petitioner.

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.

As per allegations levelled in the FIR, the petitioner was found in possession of Pheniramine Maleate Injection IP Avil, Buprenorphine Injection IP, 10000 intoxicant tablets having Diphenoxylate Hydrochloride and Alprazolam along with other drugs.

Same issue was there before this Court in ***Criminal Misc.***

No.32387 of 2015 in *Criminal Appeal No. S-840-SB of 2015* titled as *Rakesh Kumar vs. State of Punjab* decided on **29.01.2018** wherein it was held that manufactured drugs, may be containing narcotic drugs or psychotropic substances, if manufactured by a manufacturer, must be tried if violation is there under the Drugs and Cosmetics Act and not under the NDPS Act, except those in loose form by way of powder, liquid etc.

Accordingly, by considering the facts as mentioned above and also the fact that the petitioner is in custody since 06.05.2017; no other case is pending against him; the trial may take time to conclude; no purpose would be served by keeping the petitioner in custody and all witnesses are officials witnesses and there is no possibility that the petitioner may influence the witnesses or tamper with the evidence, the present petition is allowed and the petitioner (Azam Khan @ Shallu) is directed to be released on regular bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court.

06.09.2018
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

No