

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

Sr. No.207

CRM-M-39569-2017 (O&M)

Date of decision : 23.01.2018

Kawaldeep Gabha @ Kimmi

..... Petitioner

VERSUS

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. G.S. Hayer, Advocate, for the petitioner.

Mr. Kirat Singh Sidhu, DAG, Punjab.

SUDHIR MITTAL, J. (Oral)

CRM-1302-2018

This is an application for placing on record the correct translated copy of FIR (Annexure P-1).

2. Application is allowed. Annexure P-1 is taken on record.

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3. The petitioner seeks regular bail in case FIR No.0039 dated 18.07.2017, registered at Police Station Lakhewali, , District Sri Muktsar Sahib, under Section 22 of NDPS Act, 1985.

4. Reply dated 22.01.2018, by way of affidavit of Sh. Bhupinder Singh, PPS, Deputy Superintendent of Police, Sub Division, Malout, District Sri Muktsar Sahib on behalf of the respondent, has been filed by the learned State counsel in Court today and the same is taken on record. He further submits that the challan has been presented in Court.

5. As per the allegations made in the FIR, the petitioner was intercepted at a naka and 4,200 tablets of Alprafresh 0.5 mg. (containing Alprazolam) were recovered from a polythene packet in his possession. The polythene packet was placed on the fuel tank of a motor-cycle, which was being driven by the petitioner.

6. Learned counsel for the petitioner contends that he is a licensed Chemist having a valid drug licence on the date the alleged recovery was made from him. This is not disputed by the learned State counsel. In fact, report dated 12.12.2017, received from the Drug Inspector, Sri Muktsar Sahib, has been annexed with the reply of the State as Annexure R-1. According to this report, the petitioner holds a valid retail sales drug licence. However, the learned State counsel submits that the recovery made is of commercial quantity and that the petitioner was transporting the said drug in violation of the NDPS Rules. He further relies upon a Division Bench judgment of this Court titled as **'Inderjeet Singh @ Laddi and others Vs. State of Punjab, 2014(3) RCR (Crl.) 953,** to submit that 'Alprazolam' is a manufactured drug and possession thereof in contravention of the NDPS Act, 1985 or the Rules framed under the said Act is illegal.

7. It is not in dispute that the petitioner is a licensed retailer of drugs. The recovery was allegedly made while he was riding a motor-cycle. Leaned State counsel has referred to Rule 67 of the NDPS Rules, 1985, to submit that the drugs were being transported in violation of the said Rule. This contention cannot be accepted because, the said Rule is regarding bulk transportation and not with regard to a small

quantity, which can be carried even on a motor-cycle. The argument regarding possession of commercial quantity, is not acceptable as the petitioner is a licensed drug retailer.

8. Learned counsel for the petitioner submits that the petitioner has been in custody since 18.07.2017. Thus, I deem it appropriate to order the release of the petitioner on bail. Accordingly, without commenting upon the merits of the case, the petition is allowed and the petitioner-Kawaldeep Gabha @ Kimmi, is ordered to be released on bail on his furnishing bail and surety bonds to the satisfaction of the trial Court/Judge, Special Court, Sri Muktsar Sahib.

(SUDHIR MITTAL)
JUDGE

January 23, 2018

Ramandeep Singh

Whether speaking / reasoned

Yes / No

Whether Reportable

Yes/ No