

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

CRM-M-49215-2017 (O&M)

Date of decision: 19.03.2018

Sukkhwinder Singh @ Sukhi

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present: Mr. Jimmy Singla, Advocate for the petitioner.

Mr. Sidakmeet Singh Sandhu, AAG, Punjab.

...

TEJINDER SINGH DHINDSA, J. (ORAL).

Petitioner seeks benefit of regular bail pending trial in case FIR No.92 dated 27.04.2017, under Sections 22/25/29/61/85 of the NDPS Act, registered at Police Station Civil Lines, District Patiala.

As per prosecution version, the alleged recovery of 20 bottles (containing a total of 2 liters intoxicant liquid) was effected and which was found to be containing Codeine Phosphate.

Counsel has adverted to an order dated 25.01.2018 passed by a Coordinate Bench of this Court in **CRM-M-2296-2018**, whereby concession of bail was granted to one Yogeshwar Singh and against whom the alleged recovery was of 140 bottles (containing 100 ml each) and in which also Codeine Phosphate was detected.

Order passed by Coordinate Bench in **Yogeshwar Singh's case (supra)** is in the following terms:

“As per allegations in the FIR, two persons alighted from the rear door of the bus who were carrying black Pithoo bag on their shoulder and started running in the opposite

direction on seeing the police party. They were apprehended on the basis of suspicion. 140 bottles of ONEREX weighing 100 ml each were recovered from the petitioner. Similar quantity was allegedly recovered from co-accused Sukhvir. On analysis, the contraband was found to be containing Codeine Phosphate.

Learned counsel for the petitioner submits that Codeine being a manufacturing drug and also being a contraband in terms of Serial No.28 of the Schedule has to be treated as a manufacturing drug punishable under Section 21 of the NDPS Act as per Govt. of India Notification No.SO 826 (E) dated 14.11.1985 and SO 40(E) dated 29.01.1993.

*In view of CRM No.33873 of 2016 in CRA-S No.1614-SB of 2014 **Deepak Kumar versus State of Punjab**, CRM No.3018 of 2015 in CRA-S No.3080-SB of 2014 **Rajesh Kumar versus State of Punjab**, CRM No.4935 of 2016 in CRA-S No.4231-SB of 2015 **Meena Rani versus State of Punjab**, CRM No.9547 of 2016 in CRA-S No.4081-SB of 2014 **Kulwinder Singh versus State of Punjab**, the issue is debatable as to the trial of manufacturing drug under Section 22 of the NDPS Act.*

*Secondly, the issue with regard to competence of the person lodging the FIR to investigate the offence himself being complainant would also be debatable on the strength of **Gannu and another vs State of Punjab 2017(3) RCR (Criminal) 566, Laltu Prasad vs State of West Bengal, 2017(2) RCR (Criminal) 237 (Calcutta) (DB) and State of Himachal Pradesh vs Atul Sharma and others, 2015(6) RCR (Criminal) 949.***

Even in the present case, learned State counsel would concede that the official who had lodged the FIR is himself the Investigating Officer.

Petitioner is not stated to be involved in any other case under the NDPS Act.

Present petitioner is held entitled to the benefit of bail in terms of reasoning adopted by the Coordinate Bench in **CRM-M-2296-2018** and

reproduced herein above.

Petition is allowed.

Petitioner be enlarged on bail subject to satisfaction of trial
Court/Duty Magistrate, concerned.

Disposed of.

19.03.2018

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**

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|-----|----------------------------|--------|
| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |