

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

CRM-M No.9316 of 2018

Date of Decision: 20.11.2018

Gurjit Singh @ Baru

....Petitioner

Versus

State of Punjab

....Respondent

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Ms. Manpreet Ghumman, Advocate
for the petitioner.

Mr. Amit Mehta, Sr. D.A.G., Punjab.

DAYA CHAUDHARY, J.

Petitioner-Gurjit Singh @ Baru 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.302 dated 21.09.2017 registered under Sections 21/22/61/85 of the Narcotic Drugs and Psychotropic Substances Act at Police Station City Barnala, District Barnala.

Learned counsel for the petitioner submits that the petitioner has falsely been implicated in the case, whereas, nothing was recovered from him. As per allegations, total 360 strips of *Alprozolam Digifresh*, 160 strips of *Alprozolam Tensiwin*, 96 strips of *Alprozolam Alpoze Tablets* were recovered from the Alto car which was allegedly driven by the petitioner. Learned counsel also submits that the said tablets are manufactured medicine which do not fall under the purview of NDPS Act and no offence is made out under the NDPS Act. Learned counsel also submits that the alleged recovery has been shown to be recovered as 24000 large tablets and

6400 small tablets from the polythene bag but all the tablets were sent for chemical examination. In FSL report, it was found to be *Tramadol Hydrochloride* which do not fall under the NDPS Act. The alleged recovery is manufactured drug and *Alprozolam* is covered at Sr. No.30 of the Schedule appended to the 1985 Act but as per recommendation of Review Committee, *Alprozolam* is covered by Schedule 'H' of the Drugs and Cosmetics Act, 1940. Meaning thereby, the *Alprozolam* is covered under the 1940 Act and falls within the purview of Schedule 'H' of the 1940 Act and provisions of NDPS Act are not applicable. The petitioner is in custody since 21.09.2017 and no case under the NDPS Act is made out against him. Learned counsel also submits that the complainant and the Investigating Officer is the same person, whereas, the complainant cannot be the Investigating Officer. Two cases are there against the petitioner but he is on bail in said cases.

Learned counsel for the petitioner has relied upon the judgment of Hon'ble the Apex Court in case ***Mohan Lal vs State of Punjab AIR 2018 Supreme Court 3853*** as well as judgments/orders of this Court in cases ***Sodhi Singh @ Satnam vs State of Punjab (CRM-M No.20647 of 2018)***, decided on **25.09.2018**, ***Parveen Singh @ Dunga vs State of Punjab (CRM-M No.920 of 2014)*** decided on **11.03.2014**, ***Rachhpal Singh @ Goldi vs State of Punjab (CRM-M No.34998 of 2016)*** decided on **15.02.2017**, ***Rajinder Singh vs State of Punjab (CRM-M No.37897 of 2018)*** decided on **17.09.2018**, ***Balkar Singh vs State of Punjab (CRM-M No.45326 of 2018)*** decided on **22.10.2018** passed under the similar circumstances.

The trial Court has reached to the wrong conclusion that it falls

within the provisions of NDPS Act and recovery is commercial, whereas, the alleged recovery does not fall under the NDPS Act.

Learned State counsel has not disputed the custody period and contents of the FSL and that *Tramadol Hydrochloride* has not been declared as a *psychotropic* substance under the NDPS Act.

I have heard learned counsel for the parties and have also perused the contents of the FIR as well as other documents available on the file.

By considering the submissions made by learned counsel for the petitioner that 360 strips of *Alprozolam Digifresh*, 160 strips of *Alprozolam Tensiwin* and 96 strips of *Alprozolam Alpoze Tablets* were recovered from the Alto car which was driven by him and not from the personal possession of the petitioner; only two samples were found to be of *Tramadol Hydrochloride* which do not fall under the NDPS Act; the custody of the petitioner and also the fact that in two other cases, he is on regular bail, the present petition is allowed and petitioner, namely, Gurjit Singh @ Baru is directed to be released on regular bail on his furnishing/bail surety bonds to the satisfaction of the trial Court.

However, it is made clear that in case, the petitioner is found to be involved in any other case under the NDPS Act, the State is at liberty to move an application for cancellation of bail.

(DAYA CHAUDHARY)
JUDGE

20.11.2018
gurpreet

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No