

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

**CRM-M-558-2019 (O&M)
Date of decision: 06.09.2019**

Prem Nath

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Vipul Jindal, Advocate
for the petitioner.

Mr. Jagmohan Ghuman, DAG, Punjab.

ARVIND SINGH SANGWAN, J. (Oral)

This petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No. 32 dated 07.10.2018, registered under Section 22 of the NDPS Act, 1985 at Police Station Airport, District Amritsar City.

Learned counsel for the petitioner submitted that as per the allegations in the FIR, registered at the instance of SI Varmeet Singh, it is stated that an information was received that co-accused Balwinder Kaur and her son Jagdish Singh, in the guise of local medicines, are giving intoxicant tablets after crushing the same into powder to the people who have bodily pain and it was requested that action be taken against them. Thereafter, the police party, raided the premises of Balwinder Kaur and her son and recovered intoxicant powder of 10.5 Kgs., which was later on found to be Tramadol HCL.

Learned counsel for the petitioner further submitted that the petitioner was thereafter nominated on the disclosure of the aforesaid

co-accused that they have procured the intoxicant tablets from the petitioner and thereafter the petitioner was arrested and search was conducted.

Learned counsel for the petitioner has raised an argument that as per the consent memo, non-consent memo and recovery effected at the spot, the police has prepared computer generated documents, however, the name of the independent witness namely Inderjit Singh is recorded in handwriting. Learned counsel submitted that this raises suspicion about the presence of the said independent witness at the spot.

Learned counsel for the petitioner has referred to the statement of this witness, recorded under Section 161 Cr.P.C., to submit that the same does not inspire confidence about his presence at the spot.

Learned counsel for the petitioner has further argued that in pursuance to personal search and search of the scooter of the petitioner, the police has recovered 260 tablets of Etizolam which does not fall in the definition of Narcotic Drugs and Psychotropic Substances.

Learned counsel for the petitioner has, thus, argued that there is nothing on record to substantiate the disclosure of the aforesaid co-accused as no Tramadol salt was recovered from the possession of the petitioner.

Learned counsel for the further submitted that petitioner is the first offender and he is in judicial custody since 10.10.2018.

Learned State counsel, on the basis of the affidavit of Investigating Officer, wherein it is admitted that the Etizolam Salt is not included in the definition of Narcotic Drugs and Psychotropic Substances and on instructions from ASI Baljinder Singh, could not dispute that no narcotic substance was recovered when the personal search and search of the scooter of the petitioner was conducted.

In view of the above, without commenting upon the merits of the case, considering the submission of learned counsel for the petitioner that it will be a debatable issue during the course of trial whether the recovery of Tramadol salt from co-accused Balwinder Kaur and Jagdish Singh would include the conscious possession of the petitioner and also considering the fact that petitioner is not involved in any other case and he is in judicial custody since 10.10.2018, the present petition is allowed. The petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned.

06.09.2019*Waseem Ansari***(ARVIND SINGH SANGWAN)
JUDGE***Whether speaking/reasoned**Yes/No**Whether reportable**Yes/No*