

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

CRM-M-13517-2020

Date of Decision:17.09.2020

Gurpreet Singh @ Gopi

.....Petitioner

Vs.

State of Punjab

....Respondent

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

Present: Mr. Sanjeev Kumar Arora, Advocate,
for the petitioner.

Mr. Prabhjot Singh Walia, AAG, Punjab.

AMOL RATTAN SINGH, J. (Oral)

All cases listed today have been taken up for hearing by way of video conferencing because of the situation existing due to the Covid-19 pandemic.

On June 12, 2020, the following order had been passed by this court:

“All cases listed today have been taken up for hearing by way of video conferencing because of the situation existing due to the COVID-19 pandemic.

On the request of learned counsel for the State, adjourned to 16.06.2020, for him to produce the order of the learned Magistrate at the time when the contraband allegedly seized from the petitioner was produced by the investigating agency to determine as to whether the exact weight of the contraband is given anywhere on the strips of the tablets stated to have been recovered from the petitioner.

It is to be noticed that with learned counsel for the petitioner has submitted that not even the brand name of the tablets recovered are shown to be given in the FIR and therefore if no brand name was present and no details of the weight of each tablet was also given, it is also not determinable as to whether the quantity alleged to have been recovered was commercial quantity or not.

He further relies upon various judgments to submit that even 500 tablets of Alprazolam fall below the commercial quantity, of more than 100 grams (of Alprazolam).

Mr. Beniwal would also address arguments on that issue on the next date of hearing.”

Thereafter, on June 16, 2020, the following order had been passed:

“All cases listed today have been taken up for hearing by way of video conferencing because of the situation existing due to the COVID-19 pandemic.

This petition has been filed under the provisions of Section 439 of the Cr.P.C. for the grant of 'regular bail' to the petitioner, in case FIR no. 30 dated 08.04.2020, registered at Police Station City Zira, District Ferozepur, for the alleged commission of an offence punishable under Section 22 of the NDPS Act.

Pursuant to the order dated 12.06.2020, learned counsel for the State has sent by way of a 'WhatsApp communication' to the Reader of this court, the order passed by the learned JMFC Zira, on 09.04.2020, in terms of Section 52-A of the NDPS Act, 1985.

A perusal thereof shows that the sealed parcel stated to be containing 150 tablets (contained in 15 strips of 10 tablets each), were produced in a sealed cover before the Magistrate, from which he drew two samples by breaking the seal on the parcel. The samples drawn, were stated to be contained in two strips, each of 10 tablets, of the drug Cardilax Alprazolam, with the samples then sealed with the seal of the Magistrate, and sent for chemical examination.

Learned counsel for the petitioner submits that as a matter of fact no weight of each tablet has been mentioned by the learned Magistrate in the said order and that as per the judgment of a co-ordinate Bench of this court in **Gurmeet Kaur alias Kati vs. State of Punjab** (passed in CRM-M-4933- 2020), decided on 04.03.2020, even 500 tablets of Alprazolam weighing 140 milligrams each, were held to be non-commercial quantity, as commercial quantity is above 100 grams.

He further submits that in fact the tablets in question in the present case were found to be stamped with an expiry date of the year 2018 and therefore, it would be very strange that the petitioner would be selling any drugs that had expired.

He therefore submits that at least till the FSL report comes in, the petitioner is entitled to interim bail to determine as to whether the quantity allegedly recovered from him was, firstly, even a drug at all considering the fact that it had expired, and secondly, whether the weight of the drug falls within commercial quantity or not.

He next submits that though there are other criminal cases registered against the petitioner, there is none under the provisions of the NDPS Act.

Per contra, Mr. Beniwal, learned counsel for the State, submits that as regards the expiry date, the petitioner was not selling the drugs over the counter to any buyers who would be using them for medicinal purposes and therefore whether the person buying the medicine is even aware of the expiry date or not, or whether there would still be an element of narcotics that would work as such in the body system of any person, would be a moot point and consequently, as the petitioner was found to be carrying those drugs (as per the case of the investigation agency), he does not deserve the concession of

bail, especially as there are other criminal cases registered against him.

Having considered the matter, though I (prime facie at least) agree with the learned State counsels' contention as regards the effect (or non-effect) of the expiry date *qua* the sale of the tablets, however, without making any comment on the merits thereof at this point, and in view of the fact that as regards the NDPS Act, this is stated to be the first offence committed by the petitioner (if committed as per the allegation), it would be appropriate to await the report of the chemical examiner as regards the quantity of the drug allegedly recovered from the petitioner, to see as to whether it falls within commercial quantity or otherwise.

Consequently, adjourned to 16.07.2020.

In the meanwhile, till that date, the petitioner shall be admitted to bail upon his furnishing adequate bail bonds and surety bonds to the satisfaction of the learned trial court/Chief Judicial Magistrate/Duty Magistrate, concerned.”

Today, learned counsel for the petitioner submits that with the chemical examiners' report also having been received, the total quantity of the contraband alleged to have been recovered from the petitioner (as per the case of the investigating agency), was 23.46 grams of 'Alprazolam', with commercial quantity being above 100 grams.

Upon query learned State counsel does not deny that factual position.

That being so, without making any comment on the actual merits of the case, this petition is allowed, with the order dated June 16, 2020, admitting the petitioner to interim bail, made absolute, on the same terms and conditions, with him obviously to appear before the trial court as and when summoned after the report under Section 173 Cr.P.C. is submitted.

September 17, 2020

dharamvir/

**(AMOL RATTAN SINGH)
JUDGE**

Whether speaking/reasoned : YES
Whether Reportable : NO