

CRM-M-11104-2021

Date of Decision : 12.10.2021

Manjinder Singh @ Money

...Petitioner

Versus

State of Punjab

....Respondent

Coram : Hon'ble Mr. Justice B.S. Walia

Present : Mr. Gursimran Singh, Advocate for the petitioner.

Mr. A.A. Pathak, Addl. AG, Punjab.

B.S. Walia, J. (Oral)

1. Prayer in the petition under Section 439 Cr.P.C. is for grant of regular bail to the petitioners in case FIR No.120 dated 02.09.2017, registered under Sections 21/22 NDPS Act, to which Section 29 NDPS Act was added later on, at Police Station Valtaha, District Tarn Taran.

2. Learned counsel contends that the petitioner was arrested in the aforementioned case on 02.09.2017 but was released on bail on 02.01.2018 due to non-receipt of report of the FSL and was rearrested on 14.10.2019 and has been in custody ever since date, that out of 1077 loose tablets of contraband only 10 tablets were sent for chemical examination and as per the report of the FSL dated 02.01.2018, each tablet contained .41 mg of alprazolam salt, with net weight of the 10 tablets being 4.1 mg.

4. Learned counsel relies upon the decision of a Division Bench of this Court in case titled as '*State of Punjab versus Dharam Singh*', 2010(3) RCR (Crl.) 94 to contend that in the absence of all 1077

loose tablets having been sent for examination to the FSL, it would not be open to the prosecution to presume that the remaining 1067 loose tablets also contained .41 mg of alprazolam salt per tablet. Reliance is also placed by learned counsel upon the decision of a Coordinate Bench dated 11.11.2020 in *CRM-M No.26752 of 2020* in case titled as '**Harjinder Singh** versus **State of Punjab**'.

5. Learned counsel contends that total quantity of salt of the 10 loose tablets sent for chemical analysis, works out to 4.1 mg i.e. small quantity and further that in the absence of all 1077 loose tablets having been sent for chemical examination, it is not open to the prosecution to presume that the remaining 1067 loose tablets also contain the same salt.

6. Learned counsel further contends that the petitioner has been in custody since 14.10.2019, challan has been presented, charges have been framed and out of 9 prosecution witnesses none has been examined till date and the trial is not likely to be concluded in the near future in view of the circumstances prevailing on account of Corona Virus Pandemic.

7. The position as noted above has not been controverted by learned State Counsel, who confirms that the number of loose tablets sent for chemical examination was only 10 and that alprazolam salt detected in the aforementioned 10 tablets was .41 mg per tablet, total 4.1. mg. Learned State Counsel also does not dispute the applicability of decision of Hon'ble the Division Bench in **Dharam Singh**'s case (supra), or for that matter of the coordinate Bench in Harjinder Singh's case (supra) on the point that in case only a small sample from amongst the loose tables

is sent for chemical examination, it is not possible to presume that the remaining loose tablets also contain the same salt.

8. Accordingly, without commenting upon the merits of the case, but by taking into account the fact that the petitioner has been in custody since 14.10.2019, alprazolam salt of the 10 loose tablets sent for chemical examination alprazolam was .41 mg per tablet, total 4.1. mg and as per the decisions as referred to above, it is not possible to presume that all remaining loose tablets contain the same salt where only a small number of the loose tablets are sent for chemical examination as also in view of the fact that out of 9 prosecution witnesses, none has been examined till date and the trial is likely to take considerable period of time to conclude in view of the circumstances prevailing on account of Corona Virus Pandemic, the petition for regular bail is *allowed* and the petitioner is ordered to be released on regular bail during the pendency of the trial on his furnishing bail bond and surety bond to the satisfaction of the learned trial Court / Chief Judicial Magistrate / Duty Magistrate concerned, provided he is not required in any other case. However, it is made clear that nothing stated hereinabove shall be construed as an expression of opinion on the merits of the case. It is also made clear that in case the petitioner misuses the concession of bail in any manner whatsoever, the prosecution would be at liberty to move an application for cancellation of bail granted to the petitioner in this case.

9. Petition allowed in the aforementioned terms.

(B.S. Walia)
Judge

12.10.2021

Ps-rajesh