

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

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**CRM-M-38634-2020
Date of decision: 21.12.2021**

Balkar Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE SANT PARKASH

Present : Mr. Brijesh Nandan, Advocate
for the petitioner.

Mr. Tanvir Joshi, AAG, Punjab
for the respondent.

SANT PARKASH, J. (ORAL)

The case has been taken up for hearing through video conferencing.

The petitioner has filed the present petition (first) under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail in case FIR No.5 dated 14.01.2015 under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "NDPS Act") registered at Police Station Harrike, District Tarn Taran (Annexure P-1).

As per the prosecution version, the petitioner on search was found to be in conscious possession of 150 grams of intoxicant powder containing salt 'Alprazolam', which is commercial quantity. The petitioner being in custody has filed present petition for grant of regular bail.

The petition has been opposed by learned State Counsel.

However, no reply has been filed by the State.

I have heard learned counsel for the petitioner and learned State counsel and gone through the record.

Learned counsel for the petitioner has submitted that the petitioner has been falsely implicated in the present case. All the proceedings regarding search and seizure have been carried out by an office of the rank of ASI and there was non-compliance of mandatory provisions of the NDPS Act. No independent witness was joined at the time of search. The petitioner is not involved in any other case under the NDPS Act. The trial is likely to take long time. Therefore, the petitioner may be ordered to be released on regular bail.

On the other hand, learned State counsel has submitted that the petitioner is accused of having kept in his conscious possession 150 grams of intoxicant powder containing salt 'Alprazolam' which falls in the category of 'commercial quantity'. The petitioner does not deserve the grant of regular bail. Therefore, the petition may be dismissed.

In the present case, the petitioner was granted interim bail by the learned trial Court but on receipt of chemical analysis report indicating the recovered quantity within the meaning of 'Commercial Quantity' the accused absconded even before presentation of challan in the year 2015 and was declared a proclaimed offender till he was arrested on 31.08.2019. The questions as to non-compliance of the mandatory provisions of the NDPS Act and the effect of complainant being investigating officer can be determined on the basis of evidence to be produced during trial and cannot be gone into at this stage. The petitioner misused the concession of interim bail granted by the trial Court, was declared a proclaimed offender due to his absence and has

derailed the process of law. The alleged recovery falling within the ambit of 'Commercial Quantity', the provisions of Section 37 of the NDPS Act construe a bar for release/grant of bail in such like cases.

In these facts and circumstances of the case but without commenting on merits, I am of the considered view that the petitioner does not deserve the concession of regular bail and the petition deserves to be dismissed.

Accordingly, the petition is dismissed.

21.12.2021

kavneet singh

**(SANT PARKASH)
JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No