

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

221

**CRM-M-13534-2022  
Date of decision: 05.04.2022**

SUKHWINDER SINGH

.....Petitioner

Versus

STATE OF PUNJAB

.....Respondent

**CORAM: HON'BLE MR. JUSTICE SANT PARKASH**

Present : Mr. Gurpal Singh Sandhu, Advocate  
for the petitioner.

Mr. H.S.Multani, AAG, Punjab  
for the respondent.

\*\*\*\*

**SANT PARKASH, J. (ORAL)**

Prayer in this petition filed under Section 439 of the Code of Criminal Procedure, 1973 is for grant of regular bail to the petitioner, in case, FIR No. 149 dated 31.07.2021 registered under Sections 22(b), 27(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act') at Police Station City Malout, District Sri Muktsar Sahib.

As per the prosecution version, on 31.07.2021, the police party headed by ASI Satwant Singh in a private car while going for patrolling purposes apprehended the petitioner and his co-accused namely Lakhpreet Singh and Nirmala. On search recovery of commercial quantity of contraband i.e. 12 vials of Omerex, 400 tablets Tramadol and 150 tablets of Carisoprodol was made from all the three accused persons. Drug money of an amount of Rs. 1,26,000/- was also recovered from co-accused Nirmala.

I have heard learned Counsel for the parties and gone

through the case file.

Learned Counsel for the petitioner has argued that only 5 bottles of Omerex, 50 tablets of Carisoma and 200 intoxicating tablets of Tramadol were allegedly recovered from petitioner. Apart from the said recovery, nothing else was recovered from the petitioner. No independent witness was joined by the police party during the alleged recovery. No recovery was effected from the conscious possession of the petitioner and alleged recovery was effected from the polythene laying on road which did not belong to the petitioner. The mandatory provisions of the NDPS Act were not complied with. The petitioner is not involved in any other case under the NDPS Act. Challan in the present case has already been filed. The petitioner is in custody since 31.07.2021. Trial is likely to take long time. Co-accused Nirmala has already been granted regular bail by this Court vide order dated 23.03.2022. No useful purpose will be served by keeping the petitioner in custody. 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 committed serious offences. In view of the nature of accusation and gravity of the offences, the petitioner does not deserve grant of regular bail. Therefore, the petition may be dismissed.

Learned Counsel for the petitioner has tried to make out case for grant of bail on the ground that the alleged recovery of contraband is to be taken individually and not jointly and the same falls under non-commercial quantity. In support of his arguments, he relies upon judgment passed by Hon'ble Supreme Court in case titled as

**'Amarsing Ramjibhai Barot Vs. State of Gujarat' 2005(3) Apex Criminal 326.**

In case **Amarsingh Ramjibhai Barot (Supra)** as relied upon by learned Counsel for the petitioner, Hon'ble Supreme Court has held that quantity of contraband carried by both the accused could not be added to bring it within meaning of commercial quantity.

In the present case, the recovery effected from the accused if taken/carried out individually then the recovery can be concluded to be non commercial.

Having considered the facts and circumstances of the case and the above referred judicial precedent, recovery of the contraband from the accused taken individually is non commercial, the period of custody of the petitioner, co-accused Nirmala has already been granted regular bail, challan in the present case already been presented, custodial interrogation of the petitioner not required for effecting any recovery and the fact that the trial is likely to take long time due but without expressing any opinion on the merits of case, the petition is allowed and the petitioner is ordered to be released on regular bail on furnishing of personal and surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

However, nothing stated hereinabove would be construed as an expression of opinion on the merits of the case.

**05.04.2022**  
kavneet singh

**(SANT PARKASH)**  
**JUDGE**

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