

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

213

CRM-M-15932-2022

Date of Decision : August 22, 2022

SUKHWINDER SINGH ALIAS GHUKK

.....Petitioner

VERSUS

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present : Mr. Rahul Bhargava, Advocate
for the petitioner.

Mr. Amit Rana, Sr. Deputy A.G., Punjab.

JASGURPREET SINGH PURI. J. (Oral)

The present petition has been filed under Section 438 Cr.P.C. for grant of anticipatory bail to the petitioner in FIR No.23 dated 31.1.2022 under Sections 22/61/85 of NDPS Act, registered at Police Station Gharinda, Amritsar.

It has been submitted by the learned counsel for the petitioner that in pursuance of the order passed by this Court on 6.5.2022, the petitioner has already joined the investigation and he has cooperated with the investigation process. He submitted that it is a case where the allegations against the petitioner are that when the police party on information came to the house of the petitioner then a polythene bag was found in his hand which he kept in the *khurli* and the ASI thereafter took the loose intoxicant tablets which were 1480 in number. He submitted that the present case was infact planted upon the petitioner in view of the fact that there was no recovery of anything from the petitioner and the

recovery, if any, as per the prosecution was from one *khurli* (hey racks). He further submitted that the petitioner is not involved in any other case and has clean antecedents and it was only because of the political rivalry that the opposite party with the connivance of the police have implicated the present petitioner in the present FIR. He submitted that even otherwise as per the prosecution story itself the tablets were loose tablets and the FIR was lodged on 31.1.2022 and after more than 7 months even the FSL report has not been obtained and it is yet to be ascertained as to whether the tablets, if any, were falling within the category of any drug under the NDPS Act or not. He further submitted that be that as it may, the petitioner has already joined the investigation and in view of the aforesaid facts and circumstances, the provisions of Section 37 of NDPS Act will not apply due to two reasons. Firstly, it is not ascertainable as to what was the nature of the salt of the tablets, if any, and secondly whether it falls under the commercial quantity or not.

On the other hand, the learned State counsel has stated on instructions from ASI Rasal Singh that it is correct that in pursuance of the order passed by this Court on 6.5.2022, the petitioner has joined the investigation. He has also submitted that it is also correct that the recovery was not from the petitioner but from a *khurli* of 1480 tablets regarding which FSL report has not been received and the tablets were loose tablets. However, he has submitted that the ASI who had come to the house of the petitioner had identified the petitioner.

I have heard the learned counsels for the parties.

The petitioner in pursuance of the order passed by this Court

on 6.5.2022 has already joined the investigation. It is not in dispute that the petitioner is not involved in any other case and has clean antecedents. As per the learned counsels for the parties, there was a recovery of 1480 loose tablets from a *khurli* but it is not ascertainable as to what was the salt of those tablets and since it cannot be further ascertainable as to whether 1480 loose tablets falls in the category of commercial quantity or not. Therefore, the bar contained under Section 37 of NDPS Act will not apply in the present case.

Consequently, the present petition is allowed and order dated 6.5.2022 is, hereby, made absolute. The petitioner is directed to join the investigation as and when called by the IO.

However, anything observed here-in-above shall have no effect on the merits of the case and is meant for deciding the present petition only.

August 22, 2022
ajay-1

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No