

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

CRM-M-22411-2022
Date of Decision:-**28.10.2022**

ARWINDER SINGH ALIAS VINDER

... Petitioner

Versus

STATE OF PUNJAB

... Respondent

-.-

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

-.-

Present:- Mr. Lakhwinder Singh Mann, Advocate
for the petitioner.

Mr. Jaspal Singh Guru, AAG, Punjab.

-.-

KARAMJIT SINGH, J. (Oral)

The petitioner has approached this Court seeking grant of regular bail in a case having FIR No.225 dated 28.10.2021 registered under Section 22 of NDPS Act at Police Station Sirhind District Fatehgarh Sahib.

The counsel for the petitioner submits that the petitioner has been falsely implicated in the present case and is lodged behind the bars for the last 1 year and is having no criminal history. The counsel for the petitioner further submits that on the last date of hearing, it was brought to the notice of this Court that the alleged medical intoxicants recovered from the petitioner were having batch number, manufacturing date and expiry date

and samples separated out of them were sent for analysis to the FSL and as per the report of FSL, which is available on the record, the same is silent as to whether the said samples were bearing any batch number, manufacturing date and expiry date. The counsel for the petitioner further submits that thus the prosecution has failed to match the aforesaid samples with the contraband alleged to be recovered from the possession of the petitioner and thus creating severe dent in the case of the prosecution and consequently the petitioner is entitled to get benefit of regular bail at this stage.

Reply by way of affidavit of Sukhbir Singh, DSP, Fatehgarh Sahib filed on behalf of the State is ordered to be taken on record.

The State counsel while opposing the present petition has submitted that commercial quantity of medical intoxicants were recovered from the possession of the petitioner by the police on 28.10.2021 and since then the petitioner is in custody. The State counsel further submits that there is no ambiguity in the report of FSL and as per the said report, the concerned samples were received in the laboratory in their intact condition and thus there is no question of tampering with the case property, in the present case. The State counsel further submits that no doubt the petitioner is in custody for the last about 1 year but is not entitled to grant of bail at this stage, when the trial is going on. However, the State counsel has not disputed the fact that the petitioner is having no criminal antecedents.

I have considered the submissions made by counsel for the parties.

As per the allegations appearing on the record commercial quantity of medical intoxicants were recovered in the present case by the

police on 28.10.2021 and since then the petitioner is lodged in custody.

Admittedly, the petitioner is having no criminal antecedents.

On the last date of hearing following order was passed by this
Court

“Counsel for the petitioner inter alia submits that as per inventory report Annexure P-3, following samples were sent for analysis : -

1. two representative sample parcels, one contraband injection Buprenorphine (Bupine) 2/2 ML having batch No.BP 004, Mfg date 09/2021, Expiry date 08/2023 each and one bottle Avil 10/10 ML having batch No.2121167, Mfg date Jul-2021, Expiry date June-2024 each and one bottle Avil 10/10 ML having batch No.2121200 Mfg date Aug-2021, Exp. Date July 2024 each, one bottle Cocrex cough syrup 100/100 ML having batch No.TBHU1541, Mfg date 09/2021, Exp. Date 08/2023 each and 10 contraband injection Buprenorphine (Leegesic 2/2 ML batch number is not visible as portion is in torn condition with seal bearing impression H.K.”

Counsel for the petitioner further submits that as per report of FSL (Annexure P-4), samples which were received by the said FSL were as follows : -

Parcel No.1: One (01) glass injection ampoule labelled as 'BUPINE' and containing 02 ml of colorless liquid material.

Parcel No.2: One (01) glass injection ampoule labelled as 'LEEGESIC' and containing 02 ml of colorless liquid material.

Parcel No.3: One (01) glass injection vial, labelled

as 'AVIL' and containing 10 ml of colorless liquid material.

Parcel No.4: One (01) brown colored plastic bottle, labelled as 'COCREX COUGH SYRUP' containing 100 ml of orange liquid material.

Counsel for the petitioner further submits that from the above, it is clear that articles which reached FSL do not conform with the description of the articles which are mentioned in Annexure P-3, thus, making case of the prosecution doubtful and on this sole ground, the petitioner is entitled to grant of regular bail as he is in custody for the last more than 10 months.

State counsel on instructions from ASI Charanjit Singh submits that actually there was no discrepancy in the parcels which were sent to FSL for examination of their contents and in this regard, Deputy Director, Forensic Science Laboratory has given clarification dated 9.9.2022 and the State counsel prays for time to file reply to the present petition in light of the aforesaid letter/clarification dated 9.9.2022. Needful be done within 6 weeks.

Now be listed on 28.10.2022.”

Today reply has been filed on behalf of the State, but the copy of the clarification dated 9.9.2022 given by Deputy Director FSL has not been produced along with the said reply. So the aforesaid discrepancies with regard to report of FSL, which are brought to the notice of this Court by the counsel for petitioner have not been explained by the State counsel in any manner. As per the reply filed on behalf of the State, the FSL has given its clarification report dated 9.9.2022 and as per the said report there was

typographical error/mistake in the earlier report submitted by FSL. The report of FSL is dated 14.1.2022 and the same is Annexure P-4 whereas the clarification if any given by FSL is dated 9.9.2022 meaning thereby that the said clarification has been given by FSL after about 8 months of the submission of its report. The relevance of the aforesaid clarification report will be tested during the trial.

In view of the above, the prosecution has *prima-facie* failed to show that the samples which reached the office of chemical examiner/FSL are the same samples which were separated by the Investigating Officer in presence of the concerned Illaqa Magistrate at the time of preparing the inventory as per the provisions of Section 52-A of NDPS Act and thus causing adverse effect on the case of prosecution.

In the light of the above this Court is of the view that the petitioner is entitled to grant of regular bail even in the face of the strict provisions of Section 37 of NDPS Act.

Consequently, the present petition is allowed and the petitioner is ordered to be released on bail subject to his furnishing bail and surety bonds to the satisfaction of the trial Court/CJM/Duty Magistrate concerned.

Any observations made here-in-above are not to be considered as expression of opinion on the merits of the case.

(KARAMJIT SINGH)
JUDGE

28.10.2022
Gaurav Sorot

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No