

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

206/2

CRM-M-25312-2021 (O &M)

Date of decision: 23.03.2022

BALWINDER SINGH

.....Petitioner

Versus

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE SANT PARKASH

Present : Mr. Raman Goklaney, Advocate
for the petitioner.

Mr. V.G.Jauhar, Senior DAG, Punjab
for the respondent-State.

SANT PARKASH, J. (ORAL)

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

CRM-1617-2022

For the reasons mentioned in the application, the same is allowed and recovery memo dated 27.02.2021 is taken on record as Annexure P-3 and the petitioner is exempted from filing certified/original/photocopy of the same.

CRM-M-25312-2021

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. 9 dated 27.02.2021 registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act') at Police Station Amir Khas, District Fazilka to which

Section 29 of the NDPS Act was added later on.

As per the prosecution version, on 27.02.2021 the police party while on patrolling, near village Sher Mohammad Mahigir to Mahmu Joyian road, then two persons were coming on foot carrying polybags in their hands. The petitioner was carrying black polybag whereas, his co-accused Jasvir Singh alias Tasbir Singh was carrying white polybag. On seeing the police party, both of them threw their polybags and tried to run towards the fields. Both the said persons were apprehended by the police. On search, recovery of 310 tablets of Etizolam was recovered from the black coloured polybag thrown by the petitioner and recovery of 300 tablets of Tramadol was made from the white coloured polybag thrown by co-accused Jasvir Singh alias Tasbir Singh. Both the accused were arrested by the police and FIR was registered against them.

The petition has been opposed by learned State Counsel in terms of reply by way of affidavit of Vaibhav Sehgal, PPS, Deputy Superintendent of Police, Sub Division, Jalalabad.

I have heard learned Counsel for the parties and gone through the case file.

Learned Counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case. The alleged recovery of 310 tablets of Etizolam effected from the black colour polybag thrown by the petitioner does not falls under the NDPS Act as per Schedule at the time of alleged recovery i.e. 27.02.2021 and were added first time in the schedule of NDPS Act vide notification dated

23.03.2021 after the alleged recovery. The alleged recovery of polybag neither belong to the petitioner nor was found from his conspicuous possession. No independent witness was joined to prove the alleged recovery at the spot. The mandatory provisions of the NDPS Act were not complied with. The petitioner is not involved in any other case. Challan in the present case has already been filed. The petitioner is in custody since 27.02.2021. Trial is likely to take long time. 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 the case that the recovery of 310 grams Etizolam was effected on dated 27.02.2020 whereas this salt was included in the list of contraband vide notification dated 23.03.2021 and therefore, the petitioner cannot be said to have got in his possession the contraband attracting the penalty under the NDPS Act.

Having considered the facts and circumstances of the case, recovery of the contraband effected not under the schedule of the NDPS Act at the time of recovery and added subsequently, the period of custody of the petitioner, 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.

23.03.2022
kavneet singh

(SANT PARKASH)
JUDGE

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