

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

208

**CRM-M-48746-2022
Decided on : 28.10.2022**

Malkeet Singh

. . . Petitioner

Versus

State of Punjab

. . . Respondent

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Gulrej Khan, Advocate
for the petitioner.

Mr. Anmol Singh, Sandhu, AAG, Punjab.

SANJAY VASHISTH, J. (Oral)

The instant petition has been filed under Section 439 of the Code of Criminal Procedure, 1973, for grant of regular bail to the petitioner – Malkeet Singh, who has been booked for having committed the offence punishable under Section 22 of the NDPS Act, 1985 and Sections 61 and 85 of the NDPS Act, 1985 were added later on, in FIR No. 053, dated 14.03.2022, registered at Police Station City-2, District Mansa, during the pendency of trial.

At the outset, learned State counsel has filed the custody certificate dated 27.10.2022 in Court today. Same is taken on record, subject to all just exceptions. Office to tag the same at appropriate place.

A copy thereof has been handed over to the counsel for the petitioner.

Learned counsel for the petitioner submits that recovery from

the present petitioner is 11 vials of Omerex containing the salt of Codeine Phosphate. Thus total recovery from the petitioner is of 1100 ml vials of Omerex containing the codeine phosphate. The same is marginally above to the non-commercial quantity i.e. 1000 ml=1000 grams.

Counsel for the petitioner further submits that the petitioner is inside jail for more than 7 months. Counsel for the petitioner further contends that the investigation has been completed and the report under Section 173 Cr.P.C. has already been submitted before the Court. However, charges are yet to be framed. Thus, counsel submits that the petitioner, who is 28 years of age, is not even alleged to be involved in any other case of similar activity and since the investigation is over, no purpose would be served to the prosecution by keeping the petitioner inside the jail.

While countering the arguments addressed by counsel for the petitioner, learned State counsel submits that recovery from the petitioner of 11 vials of Omerex is commercial in nature therefore bar under Section 37 of NDPS Act, would be applicable for the purpose of considering his plea for bail. However, State counsel does not dispute that investigation is complete and final report under Section 173 Cr.P.C. has already been submitted to the Court. Learned State counsel informs that there are total 12 witnesses and the process of recording of evidence is yet to start.

I have heard learned counsel for the parties and perused the relevant material available on record.

No doubt, recovery in the present case is shown to be of commercial quantity but one fact is not ignorable that said recovery is marginally above to the non-commercial quantity i.e. 1000 grams =1000 ml. Considering the fact that petitioner is not involved in any other similar

activity and inside jail for more than 7 months and that the trial is yet to start, I deem it appropriate to grant concession of bail to the petitioner.

In view of the facts and circumstances of the case and submissions recorded, hereinabove, the prayer made in the present petition is allowed. Petitioner is ordered to be released on bail in this case, subject to his furnishing bail/surety bonds to the satisfaction of the learned trial Court/ Chief Judicial Magistrate/ Illaqa Magistrate/ Duty Magistrate concerned, if not required in any other case.

It is made clear that the petitioner shall not extend any threat and shall not influence any prosecution witnesses in any manner directly or indirectly.

The observation made hereinabove shall not be construed as an expression of opinion on the facts of the case and the Trial Court is expected to decide the case on the basis of complete evidence available on record.

It is further made clear that if in future petitioner is found indulged in similar kind of activities, prosecution would be at liberty to seek cancellation of bail in the present case.

Petition stands disposed of.

(SANJAY VASHISTH)
JUDGE

28.10.2022

pooja saini

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No