

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-170-2022

Date of Decision: 11.01.2022

Subhash Chander

....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. P.S. Ahluwalia, Advocate, for the petitioner.

Mr. Randhir Singh Thind, DAG, Punjab

Through Video Conferencing

JASGURPREET SINGH PURI, J. (Oral)

The present petition has been filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No.198 dated 13.11.2021, under Section 22 of the Narcotics Drugs and Psychotropic Sustances Act, 1985, registered at Police Station City Moga, District Moga.

The learned counsel for the petitioner has submitted that it is a case where the present FIR was planted against the petitioner and no illegal activity has been done by the petitioner under any circumstance. He submitted that as per the FIR the police party had raided the shop of the petitioner where the petitioner was present and they had seized 14760 tablets of EZM having a salt of Etizolam. He submitted that it is a case

where the petitioner is a distributor of medicines and on 13.11.2021 he had purchased 15000 tablets from Arun Medicines Chambers in accordance with the due procedure and after paying GST and the receipt of the same is attached as Annexure P-4. He further submitted that the petitioner can purchase the aforesaid medicine on the basis of licence granted to him vide Annexures P-2 and P-3 which was valid on the date on which the FIR was registered. While referring to Annexure P-3 he submitted that there are some drugs which the petitioner cannot keep in view of the licence but so far the present drug is concerned, the petitioner was permitted to purchase and distribute to the retailers and to other customers which was perfectly in accordance with law and, therefore, on the face of it no offence is made out. He further submitted that despite the fact that the petitioner was holding licence and he has purchased the medicines vide Annexure P-4 after paying GST, the petitioner was illegally taken into custody only on the pretext that he was not able to show the bill. The learned counsel further submitted that no opportunity was granted to the petitioner to show the bill as the same was on the same date i.e. 13.11.2021 and it was a case of high-handedness at the hands of the police in this regard. He further submitted that the petitioner is doing the business of medicines for the last 20 years perfectly in accordance with law and there is no other case against the petitioner and he is facing incarceration from 13.11.2021. He further submitted that although the seized quantity falls under the category of commercial quantity under schedule of the NDPS Act but the provisions of Section 37 will not apply in the present case and departure can be made from the bar contained under Section 37 of the Act. He further submitted that ex facie it is a case where it can be said that the petitioner is prima facie not guilty of the offence and also there is

no likelihood that the petitioner may repeat the offence particularly in view of his antecedents and, therefore, the rigors of Section of 37 of the NDPS Act will not apply in the present case

On the other hand, Mr. Randhir Singh Thind, learned Deputy Advocate General, Punjab has submitted that it is correct that the petitioner is in custody from 13.11.2021. He submitted that the petitioner was arrested because he was not able to produce the bill or receipt of the medicines and, therefore, it cannot be said that there was high-handedness on the part of the police authorities. He further submitted that the matter is under investigation.

I have heard the learned counsel for the parties.

As per the allegations contained in the FIR, the police party had raided the shop of the petitioner who is stated to be a distributor of medicines for the last 20 years on 13.11.2021 and as per Annexure P-4 the petitioner had validly purchased the 15000 tablets from one Arun Medicines Chambers after paying GST and as per the learned counsel for the petitioner vide Annexures P-2 and P-3, the petitioner was having a valid licence to purchase and hold such medicine, so that the same can be distributed further to the retailers and customers. The argument raised by the learned State counsel that at the time of raid, the petitioner was not able to show the bill and, therefore, he was arrested cannot deny bail to the petitioner especially in view of the fact that at least now the said bill and licence has been produced and attached with the present petition and the learned State counsel has not been able to justify the custody of the petitioner in view of the aforesaid Annexures P-2 to P-4. Furthermore, even if the quantity falls

within the category of commercial quantity, the bar contained under Section 37 of the NDPS will not apply in the present case as in view of the peculiar circumstances of the case, a departure can be made from the bar contained under Section 37 of the Act. Since as per Annexures P-2 to P-4 the petitioner was entitled to purchase the medicines and to hold the same in accordance with law, this Court has reason to believe at this stage that the petitioner is not guilty of the offence and considering the antecedents of the petitioner and the fact that the State counsel has not raised any objection with regard to the fact that the petitioner may repeat the offence, the second ingredient of Section 37 of the NDPS Act would also stand satisfied and, therefore, this Court is of the opinion that at this stage a departure can be made from the bar contained under Section 37 of the NDPS Act.

In view of the aforesaid factual and legal position, this Court deems it fit and proper to grant bail to the petitioner. Consequently, the present petition is allowed. The petitioner shall be released on regular bail subject to furnishing bail bonds/surety to the satisfaction of the learned trial Court/Duty Magistrate concerned.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant for the purpose of deciding the present petition only.

11.01.2022

rakesh

(JASGURPREET SINGH PURI)
JUDGE

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