

(226)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-3085-2023
Date of Decision: 13.02.2023

GAURAV @ TOTI

... Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. G.S. Sandhu, Advocate
for the petitioner.

Ms. Navreet Kaur Barnala, Asstt. A.G., Punjab.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 439 Cr.P.C is for the grant of regular bail in case bearing FIR No.199 dated 26.10.2022 registered under Sections 22(b) of NDPS Act at Police Station Sadar Sri Muktsar Sahib, District Sri Muktsar Sahib.

2. The brief facts of the case are that a Hindu person was seen coming on foot carrying a plastic bag in his right hand. On seeing the police vehicle, he got perplexed and threw the said bag on the ground. He was apprehended and disclosed his name as Gaurav @ Toti (petitioner). On the search of the bag, 450 tablets of Alprazolam came to be recovered from him.

3. The learned counsel for the petitioner contends that the mandatory provisions of search and seizure have not complied with while purportedly effecting the recovery from the petitioner. The recovery from the petitioner is of quantity marginally above the commercial quantity. In fact, the

recovery was 101.96 gms of Alprazolam and the commercial quantity was 100 gms. Therefore, the petitioner was entitled to the grant of regular bail, moreso when he was in custody since 26.10.2022 and none of the 10 prosecution witnesses had been examined so far.

4. A reply dated 12.02.2023 by way of an affidavit of Jagdish Kumar, PPS, Deputy Superintendent of Police, Sub-Division Sri Muktsar Sahib, District Sri Muktsar Sahib has been filed on behalf of the State by the learned counsel for the State. The same is taken on record. He contends that commercial quantity of contraband has been recovered from the petitioner and therefore, he was not entitle to the grant of regular bail in view of the bar contained under Section 37 of the NDPS Act as the recovery was marignally above the commercial quantity.

5. I have heard the learned counsel for the parties.

6. This Court in the case of **Gurpreet Singh @ Gopi Versus State of Punjab, CRM-M-41039-2019, decided on 26.02.2020**, where the recovery was of 115 gms of Alprazolam, the petitioner therein was granted the concession of bail, as the recovery was marginally above the commercial quantity.

7. In the present case, the petitioner has been in custody since 26.10.2022. None of the 10 prosecution witnesses have been examined so far. He is a first-time offender. The recovery from him is of 101.96 gms of Alprazolam which is marginally above the commercial quantity of 100 gms. In this situation, the rigors of Section 37 of the NDPS Act can be relaxed to an extent and the case of the petitioner can be considered for the grant of regular bail.

8. Thus without commenting on the merits of the case, the present petition is allowed and the petitioner-Gaurav @ Toti son of Raju is ordered to be released on bail subject to his furnishing bail bonds and surety bonds to the satisfaction of learned CJM/Duty Magistrate, concerned.

9. The petitioner shall appear before the police station concerned on the first Monday of every month till the conclusion of the trial and inform in writing each time that he is not involved in any other crime other than the present case.

10. In addition, the petitioner (or anyone on his behalf) shall prepare an FDR in the sum of Rs.50,000/- and deposit the same with the Trial Court. The same would be liable to be forfeited as per law in case of the absence of the petitioner from trial without sufficient cause.

11. The petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

13.02.2023

JITESH

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