

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-11268-2021
Date of Decision:-17.01.2023

SUKHWINDER SINGH
... Petitioner
Versus
STATE OF PUNJAB
... Respondent

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CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

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Present:- Mr. Harish Goyal, Advocate
for the petitioner.
Mr. M.S. Nagra, AAG, Punjab.

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KARAMJIT SINGH, J. (Oral)

Prayer is for grant of regular bail in case having FIR No.100 dated 9.10.2020 registered under Section 22 NDPS Act at Police Station Mulepur District Fatehgarh Sahib.

The counsel for the petitioner *inter alia* contends that the petitioner who is incarcerated for the last 2 years and 3 months has been falsely implicated in the present case. The counsel for the petitioner further submits that no contraband was ever recovered from the possession of the present petitioner. The counsel for the petitioner further submits that as per recovery memo (Annexure R-2), 30 injections of Buprenorphine make

Leegisic, 2 ml having batch No.1L20002 manufacturing date 05/2020, expiry date 04/2022 and 30 vials of Avil 10 ml each were recovered from the petitioner and co-accused Sher Singh while they were travelling on a Splender motorcycle. The counsel for the petitioner further submits that however the samples which were sent for analysis to the FSL are silent regarding batch number, manufacturing date and expiry date as is clear from Annexure P-3. The counsel for the petitioner further submits that in this manner the prosecution has failed to connect report of FSL (Annexure P-3) with the articles which were allegedly recovered vide recovery memo (Annexure R-2) and thus creating doubt in the case of prosecution and consequently the petitioner is entitled to get benefit of regular bail.

Status report by way of affidavit of Mr. Sukhbir Singh, DSP, Fatehgarh Sahib filed on behalf of the State was taken on record along with copy of recovery memo (Annexure R-1) relating to co-accused Sukhjinder Singh and Harjit Singh, recovery memo (Annexure R-2) relating to petitioner and co-accused Sher Singh, copy of order dated 10.10.2020 passed by the Court of Duty Magistrate under Section 52-A NDPS Act and copy of form No.29 (Annexure R-4).

The State counsel while opposing the present petition has submitted that commercial quantity of medical intoxicant were recovered from the petitioner and co-accused by the police on 9.10.2020 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 said report the concerned samples reached the laboratory in their intact condition and thus there is no question of tampering with the case property. The State counsel further

submits that no doubt the petitioner is in custody for the last more than 2 years and 3 months but is not entitled to grant of bail at this stage when the trial is going on.

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

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

As per the recovery memo (Annexure R-2), the medical intoxicants which were recovered from the present petitioner and co-accused Sher Singh while they were travelling in a Splendor motorcycle were having batch number, manufacturing date and expiry date. However from the perusal of report of FSL (Annexure P-3) it appears that the medical intoxicants which were analysed by the FSL were not having batch number, manufacturing date and expiry date.

In view of the above, the prosecution has *prima-facie* failed to connect the report of FSL (Annexure P-3) with the medical intoxicants mentioned in recovery memo (Annexure R-2).

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 rigors of Section 37 of NDPS Act.

Consequently, the present petitioner 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.

However any observations made here-in-above are not to be construed as expression of opinion on the merits of the case.

17.01.2023
Gaurav Sorot

(KARAMJIT SINGH)
JUDGE

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No