

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CRM-M-19719-2023 (O&M)

Date of Decision: 12.5.2023

Sher Singh @ Laddi

....Petitioner

VERSUS

State of Punjab

....Respondent

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Harish Goyal, Advocate, for the petitioner.

Mr. Sanish Girdhar, AAG, Punjab

KARAMJIT SINGH, J.

Prayer in the present petition under Section 439 of Code of Criminal Procedure is for grant of regular bail to the petitioner in case FIR No.100 dated 9.10.2020 registered for the offences punishable under Sections 22 of NDPS Act at Police Station Mulepur, District Fatehgarh Sahib.

Counsel for the petitioner *inter alia* contends that the petitioner who is incarcerated since 9.10.2020, has been falsely implicated in the present case. It is further submitted that no contraband was ever recovered from possession of the petitioner. He further submits that as per recovery memo dated 9.10.2020, 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 Sukhwinder Singh while they were travelling on a Splendor motorcycle. He 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. He further contends 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 dated 9.10.2020 and thus creating doubt in the case of prosecution and consequently, the petitioner is entitled to get benefit of regular bail.

Counsel for the petitioner further submits that similarly situated co-accused Sukhwinder Singh is already granted concession of regular bail by this Court vide order dated 17.1.2023 (Annexure P-4).

Present petition is resisted by the State counsel who submits that in the instant case, commercial quantity of contraband in the shape of medical intoxicants was recovered from possession of the petitioner and co-accused Sukhwinder Singh while they were riding on a splendor motorcycle. However, State counsel on instructions from ASI Mann Singh has not disputed the fact that the petitioner is incarcerated for the last more than 2 years and 2 months and that co-accused has been enlarged on bail vide order Annexure P-4. State counsel apprised the Court that the petitioner is also facing one another case under NDPS Act. He further submits that the sample which was separated before learned Magistrate was sent to FSL and during transit, it was not tampered with as is clear from the report of FSL (Annexure P-3). He further submits that there is no ambiguity in the report of FSL and as per said report, contraband recovered from possession of the accused persons falls under commercial quantity. So, prayer is made that the present petition be dismissed.

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

As per allegations appearing on record, commercial quantity of medical intoxicants were recovered in the present case by the police. As per recovery memo whose copy is taken on record, medical intoxicants which were recovered from the petitioner and co-accused Sukhwinder Singh were having batch number, manufacturing date and expiry date. However, as per report of FSL (Annexure P-3), it appears that the medical intoxicants which were examined by FSL were not having any batch number, manufacturing date and expiry date. Thus, the prosecution has *prima facie* failed to connect the report of FSL (Annexure P-3) with the medical intoxicants mentioned in the recovery memo relating to the instant case. Further, the petitioner is in custody for the last more than 2 years and 2 months and it will take considerable time for the trial to conclude. Furthermore, similarly situated co-accused Sukhwinder Singh has been granted regular bail by this Court vide order dated 17.1.2023 (Annexure P-4).

In view of above, this Court is of the view that the petitioner is entitled to grant of regular bail even in the face of embargo provided under Section 37 of NDPS Act. Thus, no useful purpose is going to be served by keeping the petitioner in custody for any further period.

In view of the above, without commenting on the merits of the case, the present petition is allowed and the petitioner is ordered to be released on regular bail subject to his furnishing bail bonds/surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

(KARAMJIT SINGH)
JUDGE

May 12, 2023
Paritosh Kumar