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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-29764-2023 (O & M)
Date of decision: 11.09.2023

Sandeep Gupta

.... Petitioner

V/s

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Dr. Anmol Rattan Sidhu, Sr. Advocate,
with Mr. Abhinandan Jindal, Advocate,
for the petitioner.

Mr. Kanwar Sanjiv Kumar, AAG, Haryana.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 439 Cr.P.C. is for the grant of regular bail to the petitioner in case FIR No.239 dated 26.04.2023 under Section 22 of the NDPS Act registered at Police Station Mahesh Nagar, Ambala.

2. The brief facts of the case are that on 26.04.2023 while the police party was on patrolling duty, information was received that Sandeep Gupta (petitioner) was involved in the business of selling intoxicating drugs and was running a shop on the Ambala-Jagadhri road near Monga Hospital in the name and style of Gupta Medicals. Based on the aforementioned information, intimation was sent to the police station and, thereafter, the petitioner came to be apprehended. On a search being conducted as per the provisions of the NDPS Act, the recovery of 40 cards of Alprazolam tablets

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Each card had a total of 15 tablets and the total number of tablets came to 600. On weighing the 40 cards, the weight was found to be 109.23 grams.

Thereafter, the instant FIR No. 239 dated 26.04.2023 under Section 22 of the NDPS Act, Police Station Mahesh Nagar, Ambala Cantt., District Ambala, came to be registered.

Meanwhile, an FIR No.238 dated 26.04.2023 under Sections 22/29 of the NDPS Act, Police Station Mahesh Nagar, Ambala Cantt., District Ambala had been registered against one Gautam Gupta. In that case, the recovery of 300 tablets of Alprazolam each weighing 0.5 mg. totalling 150 mgs. and 110 tablets of Lorazepam each weighing 2 mg. total weighing 220 mgs. came to be effected. During the course of investigation, on 27.04.2023, Gautam Gupta, got recorded his disclosure statement that the contraband in question had been supplied by the present petitioner.

3. The learned Senior counsel for the petitioner contends that in the instant case, the recovery was of 109.23 grams of Alprazolam, which was marginally above the commercial quantity of 100 grams. In the first case i.e. FIR No.238 dated 26.04.2023, the recovery from Gautam Gupta was of non-commercial quantity of contraband in which the petitioner had been nominated in the disclosure statement and had been granted the concession of bail vide order dated 22.05.2023 (Annexure P-5). As the petitioner was in custody since 26.04.2023 and none of the 16 prosecution witnesses had been examined so far, he was entitled to the concession of bail. Reliance is placed on the judgments in ‘*Sukhchain Singh @ Manga Versus State of Punjab, CRM-M-7857-2022 decided on 04.04.2022, Pardeep Singh versus State of Punjab, CRM-M-46244-2022 decided on*

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2021)' decided on 11.11.2022, 'Jang Kanwar Versus State of Punjab (CRM-M-53415-2021)' decided on 19.01.2022, 'Shankar Prashad Chanau Versus The State of Punjab, CRM-M-24090-2020, decided on 27.08.2020, Gurpreet Kumar Versus State of Punjab, CRM-M-17021-2021, decided on 31.08.2021, Salim Versus State of Haryana, CRM-M-42436-2020, decided on 24.02.2021, Gagandeep Versus State of Punjab, CRM-M-3055-2021, decided on 27.01.2021, Gurpreet Singh @ Gopi Versus State of Punjab, CRM-M-41039-2019, decided on 26.02.2020, Dalbara Singh Versus State of Punjab, CRM-M-47880-2022 decided on 16.01.2023', and Vivek Watts versus State of Punjab, CRM-M-13791-2022 decided on 15.02.2023'.

4. The learned counsel for the State, on the other hand, contends that commercial quantity of contraband had been recovered from the petitioner. Not only was the petitioner an accused in the instant FIR but he was also named in the disclosure statement of Gautam Gupta-accused in FIR No.238 dated 26.04.2023 under Sections 22/29 of the NDPS Act, Police Station Mahesh Nagar, Ambala Cantt., District Ambala. Therefore, as the petitioner was a habitual offender and commercial quantity of contraband had been recovered from him, he was not entitled to the concession of bail in view of the bar contained under Section 37 of the NDPS Act. He, however, concedes that in FIR No.238 dated 26.04.2023, the recovery from Gautam Gupta is of non-commercial quantity of contraband and the petitioner is named in the disclosure statement of the said Gautam Gupta. Both Gautam Gupta and the petitioner have been granted the concession of bail. He also concedes that the petitioner is in custody since 26.04.2023 and none of the 16 prosecution witnesses have been examined so far.

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6. In the cases of 'Sukhchain Singh @ Manga Versus State of Punjab, CRM-M-7857-2022 decided on 04.04.2022, Pardeep Singh versus State of Punjab, CRM-M-46244-2022 decided on 19.01.2023, Hari Yadav @ Haiya versus State of Punjab (CRM-M-37645-2021)' decided on 11.11.2022, 'Jang Kanwar Versus State of Punjab (CRM-M-53415-2021)' decided on 19.01.2022, 'Shankar Prashad Chanau Versus The State of Punjab, CRM-M-24090-2020, decided on 27.08.2020, Gurpreet Kumar Versus State of Punjab, CRM-M-17021-2021, decided on 31.08.2021, Salim Versus State of Haryana, CRM-M-42436-2020, decided on 24.02.2021, Gagandeep Versus State of Punjab, CRM-M-3055-2021, decided on 27.01.2021, Gurpreet Singh @ Gopi Versus State of Punjab, CRM-M-41039-2019, decided on 26.02.2020, Dalbara Singh Versus State of Punjab, CRM-M-47880-2022 decided on 16.01.2023', and Vivek Watts versus State of Punjab, CRM-M-13791-2022 decided on 15.02.2023',

where the recovery from the accused was marginally above the commercial quantity for the respective contraband in each case, the Court granted bail to the accused therein.

7. Admittedly, in the other case registered against the petitioner vide FIR No.238 dated 26.04.2023, he has been granted the concession of bail vide order dated 22.05.2023 (Annexure P-5) passed by the Additional Sessions Judge, Ambala. In the instant case, the recovery is of 109.23 grams of Alprazolam which is marginally above the commercial quantity of 100 grams. The petitioner is in custody since 26.04.2023 and none of the 16 prosecution witnesses have been examined so far. In such a situation, the provisions of Section 37 of the NDPS Act can be relaxed to an extent and the

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9. Thus, without commenting upon the merits of the case, the present petition is allowed and the petitioner-Sandeep Gupta is ordered to be released on bail to the satisfaction of the Trial Court/Duty Magistrate concerned.

10. The petitioner shall appear on the first Monday of every month before the police station concerned till the conclusion of the trial and furnish an affidavit each time that he is not involved in any crime other than the case(s) mentioned in this order.

11. In addition, the petitioner (or someone on his behalf) shall prepare an FDR in the sum of Rs.2,00,000/- 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.

(JASJIT SINGH BEDI)
JUDGE

September 11, 2023
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No